

**COURT OF APPEAL**

**MARGARET McMURDO P  
FRASER JA  
PETER LYONS J**

**Appeal No 5745 of 2013  
SC No 4723 of 2013**

**LEONARD WILLIAM CLAMPETT** **Appellant**

**v**

**ATTORNEY-GENERAL OF QUEENSLAND** **Respondent**

**BRISBANE**

**TUESDAY, 29 OCTOBER 2013**

**JUDGMENT**

**THE PRESIDENT:** Justice Fraser will deliver his reasons first.

**FRASER JA:** On 27 May 2013 the appellant filed a claim seeking orders that the Queensland Parliament had unlawfully presented for Royal assent the Bill for the *Australia Acts (Request) Act 1985* (Qld) in breach of section 53 of the *Queensland Constitution* and that the *Australia Acts (Request) Act 1985* was and is of no effect. The appellant's statement of claim sought a declaration that the *Australia Acts (Request) Act 1985*, "was invalid *ab initio* and is disregarded with impunity by all".

On application by the respondent, a judge in the Trial Division ordered on 14 June 2013 that the appellant's claim be set aside, and that the appellant pay the respondent's costs of the application on the indemnity basis. The appellant has appealed against those orders.

Subsection 53(1) of the *Constitution Act 1867* (Qld), as amended by the *Constitution Act Amendment Act 1977* (Qld) provided that a Bill for an Act that “expressly or impliedly in any way affects” specified sections of the *Constitution*, including sections 11A, 11B and 14, and section 53 itself “shall not be presented for assent by or in the name of the Queen unless it has first been approved by the electors in accordance with this section and a Bill so assented to, consequent upon its presentation in contravention of this subsection shall be of no effect as an Act”. The appellant argued that the Bill for the *Australia Acts (Request) Act 1985* (Qld) fell within subsection 53(1), so that there having been no referendum approving the Bill in accordance with sub-sections 53(2) to (4) the Act was invalid. The primary judge rejected the argument holding that he was bound to do so by *Sharples v Arnison* [2002] 2 Qd R 444 and *Clampett v Hill & Ors* [2007] QCA 394. The primary judge also cited another decision which was inconsistent with the appellant’s argument, *R v Minister for Justice and Attorney-General of Queensland, ex parte Skyring* [1986] QSC 8.

Contrary to the appellant’s argument, the amendments to the *Queensland Constitution* were made by the *Australia Act 1986* (UK) or the *Australia Act 1986* (Cth). The *Australia Acts (Request) Act 1985* (Qld) did not have any effect upon the *Queensland Constitution*. It merely requested the Parliaments of the United Kingdom and the Commonwealth to enact legislation which, if enacted, would have such an effect. This was all explained in McPherson JA’s scholarly and convincing judgment in *Sharples v Arnison* at [9] to [25]. The appellant’s elaboration upon his argument that the Queensland Act was beyond Queensland’s legislative power, a mere subterfuge, and part of a conspiracy to defeat the constitutional rights of electors, cannot stand with the reasoning in *Sharples v Arnison* at [26] to [30]. As McPherson JA also pointed out at [31], these questions had earlier been decided on a number of occasions in the Supreme Court.

Notwithstanding the authoritative decision in *Sharples v Arnison* the appellant advanced similar arguments in *Clampett v Hill & Ors*, where they were again rejected. There is no reason to doubt the correctness of those decisions. The appellant had not advanced any new argument of substance. The appeal should be dismissed.

**THE PRESIDENT:** I agree.

**PETER LYONS J:** I agree.

**THE PRESIDENT:** The order is the appeal is dismissed.

...

**THE PRESIDENT:** The respondent has applied for an order that the appellant pay the respondent's costs of the appeal on the indemnity basis. Such an order is justified by the circumstance that the appeal must be presumed to have been brought in wilful disregard of the law established by the earlier decisions of which the appellant was obviously aware: see *Fountain Selected Meats (Sales) Pty Ltd v International Produce Merchants Pty Ltd* (1988) 81 ALR 397 at 401. In my view, the appellant should be ordered to pay the respondent's costs of the appeal on the indemnity basis.

**FRASER JA:** I agree.

**PETER LYONS J:** I agree.

**THE PRESIDENT:** The further order of the Court is that the appellant is to pay the respondent's costs of the appeal on the indemnity basis.