

17/87

HIGH COURT OF AUSTRALIA

Re BOLTON & ANOR; Ex parte BEANE

Mason CJ, Wilson, Brennan, Deane, Dawson, Toohey and Gaudron JJ

12 February, 9 April 1987

[1987] HCA 12; (1987) 162 CLR 514; (1987) 70 ALR 225; (1987) 61 ALJR 190; 25 A Crim R 90**STATUTORY INTERPRETATION – SECOND READING SPEECH – WHETHER AVAILABLE AS AN AID TO INTERPRETATION – WHETHER MINISTER'S SPEECH CAN BE SUBSTITUTED FOR THE TEXT OF THE LAW: ACTS INTERPRETATION ACT 1901 (CTH.) S15AB.****Where a provision in an Act is ambiguous, the second-reading speech of the Minister when introducing the Bill is available as an aid to interpretation. Whilst deserving serious consideration, the speech cannot be determinative nor substituted for the text of the law.****MASON CJ, WILSON and DAWSON JJ:** (Deane J in effect agreeing). **[227]** We have had the advantage of reading the reasons for judgment prepared by Gaudron J. We agree with the conclusion to which her Honour has come and in substance with her reasons for reaching that conclusion. However, we wish to add some observations of our own.

The first and primary question to be resolved in this case is whether the warrant under which Mr Beane was arrested and detained was authorised by s19 of the *Defence (Visiting Forces) Act* 1963 (Cth.), as amended (the Act). Ultimately, the answer is to be found in the proper construction of the provisions of the Act rather than by reference to the undisputed values securing the liberty of the individual that for centuries have illumined the common law. The respondents say no more and no less than that Mr Beane's apprehension and detention are strictly in accordance with the Act. They readily accept the abiding principles of the common law. The process of construction is in this case a difficult one and it is not surprising that reasonable minds may differ in the conclusions to which they come, as indeed has happened here.

It is said that Mr Beane is a deserter or absentee without leave from the armed forces of the United States of America. It is alleged that the desertion or absenting without leave occurred in Vietnam in 1970. The allegation remains an issue between the parties and its resolution has been reserved pending the decision of the court on the questions of law that have been canvassed. There are powerful arguments, as appears from the reasons for judgment of Toohey J in support of the respondents' contention that on its proper construction s19 of the Act authorises the arrest in Australia of a deserter or absentee without leave from the forces of a country to which the section applies notwithstanding that the desertion or absenting occurred outside Australia. There are the textual matters that tend to distinguish Pt III of the Act from Pt II, thereby emphasising that s19 is not intended to be confined to deserters or absentees from visiting forces while in Australia.

Furthermore, given that s19 is ambiguous, consideration may be given in ascertaining the meaning of the provision to the second-reading speech of the Minister when introducing the Bill for the Act into the House of Representatives in 1963: *Acts Interpretation Act* 1901 (Cth.), as amended, s15AB. That speech quite unambiguously asserts that Pt III relates to deserters and absentees whether or not they are from a visiting force. But this of itself, while deserving serious consideration, cannot be determinative; it is available as an aid to interpretation. The words of a **[228]** Minister must not be substituted for the text of the law. Particularly is this so when the intention stated by the Minister but unexpressed in the law is restrictive of the liberty of the individual. It is always possible that through oversight or inadvertence the clear intention of the Parliament fails to be translated into the text of the law. However, unfortunate it may be when that happens, the task of the court remains clear. The function of the court is to give effect to the will of Parliament as expressed in the law. *[Their Honours dealt with other matters not relevant to this report].*