

just passed a law saying you cannot. Well, while that law is patently unconstitutional, or would be, I don't think you would have an abridgment or denial on the part of the State until that colored person had pursued his judicial remedies under the law of the State and appealed this case to the superior court, and give them a chance to knock it out.

The CHAIRMAN. We will now adjourn until 2 o'clock.

(Whereupon, at 11:55 a.m., the committee recessed, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. Bloch, just before we adjourned this morning, you read from an opinion of Mr. Justice Frankfurter in the case of *Snowden v. Hughes*, 321 U.S., page 13. On that same page, Mr. Bloch, is the conclusion of Chief Justice Stone. He wrote the opinion for the Court, and Justice Frankfurter wrote a concurring opinion. In the opinion of the Court, by Chief Justice Stone, we read the following:

As we conclude that the right asserted by petitioner is not one secured by the 14th amendment, and affords no basis for a suit brought under the section of the Civil Rights Act relied upon, we find it unnecessary to consider whether the action by the State board, of which petitioner complains, is State action within the meaning of the 14th amendment. The authority of *Barney v. the City of New York*, *supra*, on which the court below relied, has been so restricted by our later decisions (see *Raymond v. Chicago Traction Company*, 207 U.S., p. 20, *Home Telephone & Telegraph Company v. Los Angeles*, 227 U.S., 278, *Iowa Des Moines Bank v. Bennett*, *supra*, 246, the *United States v. Classic*, 313 U.S. 299) that our determination may be more properly and more certainly rested on petitioner's failure to assert a right of the nature such as the 14th amendment protects against State action.

In other words, this case was not decided on the 14th amendment, because the Court held it was not necessary for them to decide the case on the 14th amendment, and there was no action they held under the Civil Rights Act, not because of a violation of the 14th amendment, but because of some procedural defect on the part of the petitioner.

Mr. BLOCH. That may be true, Mr. Chairman.

The CHAIRMAN. So that the statement of Judge Frankfurter was purely gratuitous. It has no force or effect whatsoever.

Mr. BLOCH. Well, now, that remains to be seen, because it so happens that of the nine Justices, including the Chief Justice, who were on the Court at the time, that is, at the time of the decision of *Snowden v. Hughes*, there are only three left. One is Justice Black, who participated with the majority, for whom Chief Justice Stone wrote. The other is Justice Frankfurter. And the other is Justice Douglas, who dissented in *Snowden v. Hughes*.

The CHAIRMAN. What are you going to speculate from that?

Mr. BLOCH. I am not going to speculate. I am just going to hope that when the *Raines* case, which is now before the Court over there, is decided, that Justice Frankfurter's views will prevail over the views expressed by Chief Justice Stone.

And when we recessed, Mr. Meader had asked the question which was right along the line of what we are talking about now, Mr. Chairman, and I wanted to call attention to this.

One of the great questions is whether *Barney v. the City of New York* is still the law.