Now, the majority there—well, you are invoking the doctrine of stare decisis. I sort of don't rely on that any more. It all depends on what the Court—who the Court thinks was right—whether they think Chief Justice Stone's view was right, concurred in by three or four of the Justices, or whether they think that Justice Frankfurter was right.

Now, the *Barney* case is sort of a keystone. I do not know that it has been taken back. Justice Frankfurter said it had not.

The CHAIRMAN. Well, Justice Stone—I will read——

Mr. BLOCH. He did not say it was not the law. He said that it has been so weakened by subsequent decisions that we had better plant our decision on another basis. That is what he said. You see if he didn't.

The CHAIRMAN. He said——

Mr. BLOCH. He said *Barney* v. *the City of New York* has been so weakened by the *California* case, the *Home Telephone* case, and the *Raymond Traction Company* case, that we had better plant our opinion on another basis. But he did not take it back.

The CHAIRMAN. We have got to take his word—the words are plain as a pikestaff. It reads as follows:

> The authority of *Barney* v. *the City of New York*, on which the court below relied, has been so restricted by our later decision—

and he cites them—

> that our determination may be more properly and more certainly rested on other grounds—

and so forth.

Mr. BLOCH. Well, I think, and I hope the Supreme Court is going to decide in one or two or three of the cases about to be pending before them, that the *Barney* case still is law.

Now, at the recess, particularly in the light of some of the questions that were asked me this morning by two of the gentlemen to the right here—I think it was Mr. Rogers and Mr. Holtzman—I went and got the *Barney* case. And the *Barney case*—I believe I said 163 U.S.—it is 193 U.S. That came up in New York. It affirmed a decision of a district judge that is reported in 118 Federal Reporter 683. It is very interesting to see this.

Counsel in the *Barney* case, for Barney, and they were distinguished counsel, Mr. Maxwell Evarts was among them, he was a leading counsel, made certain contentions. He contended in the *Barney* case just exactly what Mr. Rogers and Mr. Holtzman were trying to get me to admit before noon was the law.

Now, here is what he said. He says:

> The theory of the court—

speaking of the court below—

> seemed to be that an agent of the State can only be considered such when it acts in conformity with the specific authority given to it by the act of the legislature creating it, and that if it does any act without express legislative authority, although purporting to act by reason of the power and right conferred upon it by the State, such act is not done in its character as agent and is not deemed the act of the State. This question, however, is no longer open for argument. Any act of an agent of a State, done pursuant to the powers derived by him from the legislature, and by virtue of his public position as such agent, whether specifically authorized by the statute appointing him or not, is an act of the State within the meaning of the 14th amendment of the Constitution.