

Mr. BLOCH. That is the complete answer to the chairman's suggestion, the 15th amendment and the second clause of it gives the right of the Congress to enforce it by appropriate legislation.

Now, to be appropriate legislation, the legislation must be confined to the denial or abridgment by a State.

Now the question is what constitutes denial or abridgment by a State, and I continue to say that there can't be any denial or abridgment by a State when the acts or practices or pattern or whatever you want to call them, are those of individuals, not warranted by the laws of the State and acts or patterns which the State courts have not been given an opportunity to correct.

The CHAIRMAN. Counsel wishes to ask you a question.

Mr. BLOCH. And that question too is before the Supreme Court of the United States in that very case.

Mr. FOLEY. Mr. Bloch, did not the district judge in his opinion, predicate the unconstitutionality upon the fact that the act could operate against private actions of individuals as distinguished from State actions and therefore, since that was possible it was unconstitutional under the 15th amendment.

Isn't that the main issue?

Mr. BLOCH. That is about what he held. But in addition to that—

Mr. FOLEY. That was the issue in the appeal.

Mr. BLOCH. He said the act was unconstitutional because it was not appropriate legislation under the 15th amendment and the reason it wasn't appropriate legislation under the 15th amendment was that it was so broad that it could be applied to persons as well as to States and that there was no separability clause in it and therefore in the *Raines* case it was invalid.

The CHAIRMAN. That is a horse of a different color because the statute went too far in the judge's opinion. It covered private lawsuits against private individuals. That is why he struck the statute down.

Mr. BLOCH. I didn't say that he held that in order to have an abridgment or denial by the State that you have to have the State courts to pass on it.

But he slid over it and based it on the grounds that I very much preferred and if it can be held, that will end all our controversies for a while.

The CHAIRMAN. One other thing I want to get clear, Mr. Bloch.

I have been puzzled as you have been puzzled about the so-called rebuttable presumption.

In other words, where the court has ruled that there is a pattern or practice of discrimination, then the presumption is that all people of a certain race in that particular bailiwick are prescribed against, they are discriminated against as to voting and the pattern or practice applies to all of them.

I have been a little disturbed about that also. But we have had and we have passed rather a number of statutes containing rebuttable presumptions which have been upheld by the Supreme Court.

For example, in the case of the kidnaping statute where a child is spirited across a border, Congress has stated in so many words that those facts constitute a rebuttable presumption of kidnaping and that the burden of proof shifts to the defendant to disallow any criminal intent.