

Now I would think that if the Supreme Court in the kidnaping cases and in similar cases held that rebuttable presumptions were within the power of Congress to declare, certainly under the broad provisions of the 15th amendment where Congress has the power to make and pass appropriate legislation implement the first section of the 15th amendment it strikes me then that Congress has the power to set up such a rebuttal presumption to enforce the 15th amendment.

Now that presumption gave me concern. I set my fears and doubts to rest by following the statement that I have just given you.

Mr. BLOCH. Mr. Chairman, where is there anything in the bill that says that is a rebuttable presumption?

The CHAIRMAN. Nowhere does it say that.

Mr. BLOCH. Where is there anything in the bill giving anybody an opportunity to introduce evidence to rebut that presumption?

Mr. McCULLOCH. Mr. Chairman, might I comment at that point?

The CHAIRMAN. Yes.

Mr. McCULLOCH. The matter generally is approached on lines 14, 15, 16 and 17 on page 2 of H.R. 10035.

It, of course, declares that the findings in the report shall be accepted by the court unless they are clearly erroneous.

The phrase "clearly erroneous" implies that evidence might be submitted under proper conditions which would show that the report was clearly erroneous. Furthermore, it is a very simple matter to write an amendment whereby exceptions may be filed and witnesses may be called on behalf of the exceptors in order that there may be a final supplemental decree which is based upon evidence introduced into the case after the exceptors have been given an opportunity to be heard.

Later in these hearings, I shall make a statement concerning two drafts of bills designed to cure many of these possible defects. A great deal of time and care has been devoted to the problem of affording the State officials, who may later be charged with contempt, an opportunity to call and examine witnesses.

Mr. BLOCH. Does it say so?

Mr. McCULLOCH. Not in H.R. 10035, except as I said where the phrase "clearly erroneous" is used, there is a clear implication that evidence might be submitted to disprove the findings in the referee's report or there would have been no use for that phrase.

Mr. BLOCH. Mr. McCulloch, I was more apprehensive about the presumption which is a component part of the bill before you ever get to lines 14 and 15 and about which Judge Walsh testified.

The CHAIRMAN. I am sorry I can't make it stronger, Mr. Bloch.

Mr. BLOCH. It wouldn't do me much good.

Mr. MEADER. Mr. Bloch, if I could help you, I would like to have you read what Mr. Walsh said on page 14. It is not a rebuttable presumption but a conclusive presumption which Congress is enacting into law and that is why he wants this bill.

Mr. McCULLOCH. Mr. Chairman, I do not agree with that statement. The language of H.R. 10035 does not justify that statement, in my opinion.

Mr. MEADER. That is what Judge Walsh thinks the bill does.

Mr. BLOCH. What page, Mr. Meader?

Mr. MEADER. Page 14.