

National Association for the Advancement of Colored People v. Patterson

Oral Argument - January 16, 1958

Earl Warren

Number 91, National Association for the Advance of Colored People, Petitioner, versus State of Alabama.

Mr. Patterson or Mr. Rinehart, I beg your pardon.

Edmon L. Rinehart

Mr. Chief Justice, just before closing you asked me a question concerning the Alabama statutes dealing with these domestication statutes and the enforcement thereof.

Earl Warren

Yes.

Edmon L. Rinehart

There are two criminal statutes.

They are set out in the petitioner's brief at page 36 in a footnote.

They -- one of those denies a foreign corporation which makes a contract in Alabama the power to assert their rights under that contract.

Earl Warren

Yes.

Edmon L. Rinehart

They had also set certain penalties which are misdemeanors and those are enforced by the solicitors of our respective circuits and counties and on appeals where the Attorney General's Office would handle loss.

Those are the only statutes in Alabama which deal with what we would call the enforcement, that is the method of penalizing a corporation or its agents for coming in and doing business without a license.

We do not place our action or base our action in any way on those.

In fact, part of the basis of our action is that those do not provide an adequate remedy at law.

Earl Warren

What I was thinking about Mr. Rinehart was whether it has a penalty for having -- having been delinquent in that query.

There was any authority in anyone to say to that corporation that you cannot now qualify.

I consider there will be many number of penalties that might attach to it but is there such a penalty as a denial of the right to register because of the delinquency in registering beforehand.

Edmon L. Rinehart

Not a penalty but we believe a power in the court of equity in its equity jurisdiction to police, perhaps police is not the correct word, to supervise corporations once it has jurisdiction of the subject matter in this case to maintain the status quo.

We petitioned not only for temporary injunction but a permanent injunction and ultimately an order of ouster basing it on the power of the state to exclude a corporation completely.

If we had not in the first place let it in, we don't -- we actually concede, if we let a corporation in, we allowed to qualify, we can't then turn around and say, "We're sorry, we just don't like you anymore."

Or we can't ask them to waive their constitutional rights in advance and coming in as a condition preceding to entry.

But where they are interlopers as we consider this corporation to be doing business in Alabama without even the slightest action toward complying with our laws that they are interlopers and that they have absolutely no right to be here and that the equity power is the only effective way to protect and vindicate the constitutional provision which is involved here -- the constitution that is of Alabama, Section 232.

And that the equity courts have that power.

And if they have the power to oust, they have the lesser concluded power to restrain their qualified as a -- in fact, that's one of the reasons we think that the records to get to the merits of this case -- no I mean the merits before the Circuit Court is so important in this case to determine whether or not they should be ousted in a proceeding of equity in the nature of (Inaudible) such as Kansas did in State ex rel Griffith against Knights of the Ku Klux Klan.

That is the gravamen of the states petition, a sworn bill, I might add, a sworn bill in equity which was filed on June 1, 1956.

Felix Frankfurter

Does your statute regarding the domestication of foreign corporation have a provision that until such a certificate of whatever you call it, have foreign corporation can sue in your court?

Edmon L. Rinehart

If they are doing business in Alabama without qualifying, they cannot sue at our courts.

That is correct.

I am -- I stand corrected on that.

They may not enforce rights in our court growing out of that business in Alabama.

Yes, a corporation may come in and sue for instance an insurance company in certain conditions and that is not considered doing business --

Felix Frankfurter

They are legal person capable of being brought, coming in to Court and being brought to this case shows in to Court.

Edmon L. Rinehart

That is correct.

And -- if that is why (Voice Overlap) --

Felix Frankfurter

-- got a legal existence as it were subject to handicap.

Edmon L. Rinehart

Of an extremely limited nature.

Felix Frankfurter

I know but they're subject to handicaps.

Edmon L. Rinehart

That is correct, sir.

I'm not clear as to what you consider the relevance here, the records to be --

Edmon L. Rinehart

Just this, our -- we allege that they are doing intrastate business in Alabama.

We -- one of the most important phases of that business and there are others alleged which are not admitted is that they are soliciting members.

We allege and believe a large number of members.

That is a financial transaction conducted in Alabama by agents of this organization to support branches which we alleged they control on Alabama.

And if that is doing business in Alabama that we are in the position of proving that and it's going -- the best way of proving how a corporation operates that I know of, is to get their records and look at them and see what they really do, what their own record show.

Mr. Carter said yesterday (Inaudible)

Edmon L. Rinehart

No.

They we're prepared to admit and if I may, I shall read from the record. I am now reading from record pages 6 and 7, the last full paragraph on page 6 beginning on July 23.

Petitioner filed his answer admitting (1) that it was a New York corporation, (2) that it maintains its southeast regional office in Birmingham, (3) that it hired employee agents to operate this office but denied that he did organized local chapters in the state and that the agents of the corporation's solicited for said local chapters and apparent corporation, denied that he did employ or paid money to Autherine Lucy and Pollie Myers Hudson to encourage or aid them enrolling in the University of Alabama.

Admitted six, furnishing legal counsel to Autherine Lucy in prosecuting her suit against the University of Alabama.

Admitted seven, it had given moral and financial support to Negro residents of Montgomery in connection with their refusal to use the public transportation system of Montgomery and had furnished legal counsel to assist (Inaudible) M. L. King and other Negroes indicted in connection with that matter.

But denied all other allegations and inferences contained in that allegation in bill of complaint and denied eight that its officers, agents or employees have engaged in organizing chapters for the corporation in Alabama and Montgomery County, collecting dues, soliciting memberships, loaning or giving personal property to aid present aim to the corporation, admitted that it had never filed with the Secretary of State, Articles of Incorporation or designated place of business

or authorized agents within the state but denied ten, that it was required by Sections 192, 193 and 194 of Title 10, Code of Alabama in 1940 to do so.

Petitioner denied that it has violated Article XII, Section 232, Constitution of Alabama 1901 and Section 192, 193 and 194, Title 10, Code of Alabama 1940.

Further, petitioner denied 11 that these acts are causing irreparable injury to the property of civil rights of the citizens, residents and citizens of the State of Alabama.

Now, we do not concede that that is an admission of doing business in Alabama. In fact, it is one of those things to say we're admitting we're doing A, B and C but we deny these other things and when you get all finished, your laws don't apply.

Now Section 232 was all inclusive, it says all corporations doing business in Alabama, and I could only construe that to mean that they're saying that "While we admit doing certain things, we're not doing business in Alabama within the meaning of your laws."

Earl Warren

Well, Mr. Rinehart, doesn't next paragraph though bear on that?

Edmon L. Rinehart

You mean the assertion that --

Earl Warren

It's a short paragraph, I suppose you read that.

Edmon L. Rinehart

Yes, Your Honor.

In addition to the various defenses to the bill of complaint, petitioner, while asserting the Title 10, Sections 192, 193 and 194 of the Code of Alabama 1940 was not applicable, had procured the necessary forms from the Office of the Secretary of State, Montgomery, Alabama and had filled in the forms as required by law and offered to file the same.

Said forms were attached to his answer and petitioner stated that it would file these forms if the court would dissolve its orders buying petition from registering and would permit petitioner to file the forms attached to his answer.

We submit it does not and for some very definite reasons.

One, on reviewing the chronology of this case, you will see that petitioner didn't file any pleadings until 31 days after the temporary injunction of that, on the fifth of July which was three

days after and I might add, that then the trial judge set down the hearing on a motion to dissolve a temporary injunction for the 16th of July.

The State then moved to produce -- rather moved for an order for them to produce, which motion was heard on the 9th of July which counsel for the petitioner was present.

The case was fully argued and presented on that question purely of the production and the order was granted on the 11th.

Then their time was extended.

Then the order said produce on the 16th which was the day before the hearing on the motion to dissolve the temporary injunction.

Now, Alabama procedure is that while oral testimony may not be introduced on such a hearing as a matter of right, you can put it in if it isn't objected to.

But in addition, the hearing can be on affidavits of both sides.

We thought it's extremely important to have those records to sustain and (Inaudible) the allegations of the bill to prepare affidavits, to obtain affidavits.

Then the trial judge extended their time to produce. He correspondingly extended our time for the hearing because we needed those documents in connection with the hearing.

Now then, at the last hour or if not the 12th hour, at least the 11th hour, they come in with an answer.

Now, we're not interested in a corporation filing these papers if they don't have to file them. If they are exempt, they don't need to tender it.

Alabama isn't interested in a corporation not doing business in Alabama, filing these documents.

We are not trying to assert a right we don't have but we think we're entitled to a hearing on the merits as to whether or not they are doing business in Alabama because our ultimate aim in this, admittedly, I couldn't deny it on what we've alleged here, is that we think they are long-past record of ignoring our laws warranted something more than a slap on the wrist saying, "Well, now you can pay it and go and send no more."

But we felt that like Kansas, we had a right to oust them, completely.

Felix Frankfurter

May I ask you this.

You correct me if I misunderstand it -- if my understanding is inaccurate.

You brought out the proceeding against the NAACP.

They said they didn't come within your law either because they are a membership corporation of New York or because what they did in Alabama does not include what legally speaking is doing business in Alabama.

But they said as you can have them to say, I think to seldom say on the advice of counsel, well whether we are right or wrong and lead him first to comply.

So they say we're ready to file this certificate if this is what you want.

But they did contend the coercive power of Alabama to make this file.

That's correct isn't it?

Didn't they deny that they come within your law requiring to do anything including what they did do in Alabama?

Edmon L. Rinehart

I -- I agree what they offered to do in Alabama.

Felix Frankfurter

Well, what they -- but you said, they have been doing over these years during which they didn't file -- that they should have filed a certificate and domesticate themselves, isn't that true?

You said they've been doing business for good many years in Alabama and certainly way back since 1918 or probably earlier in connection with their purposes.

Edmon L. Rinehart

That is correct.

Felix Frankfurter

So that you say, you've been doing business without the requisite provision of Alabama.

They said, "We don't come within your law. We didn't have to satisfy the requirements of getting a certificate but in the interest of whatever it is, convenience, we are ready to file this certificate."

And you said, "No, we don't have to accept it."

Is that right?

Edmon L. Rinehart

That is correct.

Felix Frankfurter

Now, and on the basis of the facts that's quickly summarized, the State got a restraining order against them calling for the cessation of all business although they raised, what I supposed, is not a frivolous or a ridiculous objection to the claim asserted by the State.

Is that right?

Edmon L. Rinehart

I --

Felix Frankfurter

I know you don't -- you don't think there's much to the point, but sometimes it drives how often - a majority of my brothers think there's something to a point which I think there's nothing or by subversive.

[Laughter]

Edmon L. Rinehart

I -- I accept everything except the very last statement with a reservation as being absolutely a correct statement.

Felix Frankfurter

Then correct me.

Edmon L. Rinehart

All right.

What we say is this, first statement I will make is that the offer which they made was after the ex -- and I admit ex parte restraining order and the offer wasn't made until after we we're going to get down to the nub of the case, the facts of the case and that is something I think that should be borne in mind into spelling this which I think petitioner is trying to create, this aura of unfairness in Alabama.

Felix Frankfurter

All right.

What I've stated was merely preliminary to the (Voice Overlap) --

Edmon L. Rinehart

Oh I'm -- I'm sorry.

Felix Frankfurter

I didn't think on that statement that Alabama did something that was wrong.

This is merely -- I want to see if the preliminary facts seemed to me irrelevant to the question I'm going to put to you or correct.

Edmon L. Rinehart

They are, sir.

Felix Frankfurter

Very well.

Then you get a restraining order against him not to do business.

They must shut up sharp, is that right?

Edmon L. Rinehart

Yes.

They have not at that point, however, made any offer of compliance, whatsoever.

Felix Frankfurter

No, but you did -- you told them they must shut up sharp.

Edmon L. Rinehart

That is correct.

Felix Frankfurter

Before the validity of that order, not only the validity of the order but the scope of the decree could be contested.

The state begins another proceeding and says, produce certain documents.

That's true, isn't it?

Edmon L. Rinehart

That is correct.

Felix Frankfurter

They say you are asking us to produce documents which we are entitled.

Now whatever rights -- by the rights we have under the United States constitution to withhold.

That certainty is not a frivolous question --

Edmon L. Rinehart

No, that is not a frivolous question.

Felix Frankfurter

That being so, what I want to put to you is that pending the determination of what is not a frivolous question, what is a substantial question that respectable lawyers can raise and do raise and have raised, Alabama takes the position that although this organization has been in Alabama all these years without any attention or objection from the authority with Alabama.

I am not talking about a stopple.

I'm addressing myself to the nature of the remedy.

Although that has been so and although they raised that question ancillary to the proceedings of oust.

Alabama says, "You go out of business until this long trail of litigation because you have, standing on constitutional right said, "You don't have to obey this."

Alabama then throws them in contempt but all this time they are executed.

They get a death sentence pro tem although in the end, it may turn out that they we're constitutionally right.

You're not (Voice Overlap) of this litigation?

Edmon L. Rinehart

I -- I am going to make one correction and I think --

Felix Frankfurter

Please do.

Edmon L. Rinehart

-- the most important correction.

Alabama did not throw them into contempt.

They need never have been in contempt.

They could have tested the order to produce without ever the slightest risk of contempt.

Felix Frankfurter

Well they tested it in way in which they thought they contested according to your cases.

Edmon L. Rinehart

Our cases don't hold that in a proper way.

Felix Frankfurter

But that is the question before us whether they raise it by a -- whether a certiorari by which they sought to raise it, raised all these issues.

And even your Supreme Court said we don't have to consider this but we do consider them.

It's the love of the counsel that they had a right to pursue (Inaudible) --

Edmon L. Rinehart

I would like to address myself to that specific question in -- in considerable detail and explain the fairness of the Alabama procedure and that is this, the Alabama procedure on a subpoena duces tecum if in case of a third party or an order to produce documents is that that is an interlocutory order not appealable.

The proper remedy is petition for writ of mandamus.

And why is that?

Because the person does not have to set himself up as the sole judge of relevancy, the sole judge of constitutionality and bring himself to the position of flat out as this petitioner did in open court and saying, "We don't need anymore time.

We choose to stand on these rights."

Felix Frankfurter

Now, so far as I'm concerned, and that's the only person to whom I can ever (Inaudible).

So far as I'm concerned, if it can be established that the orderly, traditional, settled procedure of Alabama requires the rating of these questions solely by mandamus and I think the other side is out of court so far as I'm concerned because Alabama has the right to say, "It should be raised by mandamus and not by certiorari, if you're right.

Edmon L. Rinehart

If I'm right.

Well, we have cited in our brief at pages 9 and 17, thereof, Ex parte Monroe County Bank, 254 Ala. 515.

Now that I will grant you the Monroe County Bank was not a party to the action.

They were -- this was a subpoena duces tecum.

In that case, they didn't choose or felt that they did not have the duty to produce certain records in a divorce proceeding.

Husband against wife and of course these financial matters become very important.

If they proceeded by writ of mandamus to test the validity of that subpoena duces tecum in the Alabama court and it went to the Supreme Court and all the questions we're passed on it.

Now that isn't enough.

That doesn't make a great long line of cases.

In addition, Ex parte Hart cited in the Supreme Courts' opinion had a similar question of an order to produce.

The court didn't discuss that thing at length.

It was just the well accepted method in Alabama.

Felix Frankfurter

If I -- if my reading with all the consciousness that one should have about reading the decisions of a state or the law which he isn't familiar except by reading.

If my reading of your cases were a consistent document that mandamus is the crucial remedy, I would have to go with you.

But if my reading of your cases is this that sometimes Alabama does and sometimes Alabama doesn't allow all the substantive questions to be raised on certiorari then I'd say to you that it can't invoke that doctrine when the federal right is asserted when it doesn't invoke at another instances.

Edmon L. Rinehart

All right.

I -- I don't know of a case where a petition for certiorari has ever been treated as a petition for writ of mandamus.

Felix Frankfurter

That is what I suggested.

I don't think this Court -- I don't think I can say that that which the Supreme Court of Alabama treats a certiorari should be deemed to be a mandamus.

That's not my function.

But if I find that on certiorari, it has intermittently considered all substantive questions and then it can draw the curtain when a federal question is (Inaudible).

Edmon L. Rinehart

The cases which both parties have cited, Ex parte Morris at pages 8, 14 and 15 of the respondent's brief, is a case which comes to mind as well as the instant case.

Of course we submit in the instant case the Supreme Court of Alabama said we are going to exposit essentially.

We're going to demonstrate for future guidance of use but they did not make them the basis of the decision.

And I think that's a very important distinction to make and extremely important one in this case and also in Ex parte Morris.

Ex parte Morris concerned this question.

A -- an officer of the Ku Klux Klan was directed to bring before the grand jury records of that corporation -- of that organization.

Earl Warren

Is this the Kansas case you're --

Edmon L. Rinehart

No, this is not, sir.

Earl Warren

This is was in Alabama --

Edmon L. Rinehart

This is an Alabama case.

Earl Warren

Yes.

Edmon L. Rinehart

This was a grand jury proceeding on a preliminary I suppose to some criminal action.

Earl Warren

Yes.

Edmon L. Rinehart

And he said he stood on his constitutional rights not to do it and was held in contempt.

He -- he was brought in before the judge and the judge says, "You'll produce them."

Now, he then filed a petition for certiorari which is the established law of Alabama for reviewing contempt citations whether civil or criminal and a writ for certiorari was denied because on the face of the proceedings, the Court had jurisdiction, nice little memorandum decision.

Then they said, "However, we're going to exposit our views on these constitutional questions, not as a basis of decision as I read the case.

But merely because we'd like people to know that corporations, for example, don't have a privilege against self-incrimination, don't have a right of secrecy."

Now those are the chief cases which I have studied on this other than -- and that I know of myself that really face up to these problems except Ex parte Dickens also cited in petitioner's brief and our brief.

If you wish, I will refer the page number and I think I can explain that case too, and it shows that the merits of the case we're not considered.

In that case, petition for certiorari, what was considered was contempt of an order to deliver certain bonds and other documents to a receiver and equity.

The Court reiterated the traditional view that certiorari -- you look at the face of the proceedings.

You see whether there was jurisdiction of the persons -- the parties I should say, jurisdiction of the subject matter, whether there was a contempt, whether all the procedural aspects of a contempt proceeding are followed, remembering that it is a completely ancillary proceeding.

Now, and they held that in fact since the face of the proceeding is so that in fact the he had obeyed the order and that there hadn't been any new order, even though a new receiver had been appointed, there was no contempt.

They went on to say that if there was a question of a payment of a debt, the debt could be reviewed on petition for writ of habeas corpus.

Now they didn't say -- they didn't do as the Morris case and in this case.

They didn't say, "Well, now, we said all, we're got to say all we have to say."

They just went on and discussed this question of writ of habeas corpus that had he been imprisoned in this case to pay a debt which might well have been the case, why then he could have reviewed it for petition for writ of habeas corpus.

Now, there maybe other cases in Alabama, I regret I don't know of any other which bears on this issue.

Felix Frankfurter

Now suppose -- suppose one finds that while, as a matter of (Inaudible), your court thinks mandamus is the way to do it but suppose as a matter of practice, one finds that in fact they do consider, in fact, as a matter of judicial habit or course of judicial practice.

They do consider the merit and that one further finds that they've been drawn -- they drew the distinction in this case but they haven't gone with others and reaches the merits.

Let's make that assumption --

Edmon L. Rinehart

I understand it --

Felix Frankfurter

-- if you can.

We lawyers can see both sides as we are supposed to.

Why do you say then assuming that the case is here in other words is not to be dismissed because, one, of the federal question and the other one of the disposition of a -- in a local ground, what do you say to the procedure, to the decree of the restraining order which puts and an enterprise out of business although it raises -- barely raises federal constitutional question and although no -- no grounds at least I heard, mentioned, given some.

There's no -- no serious ground for saying anything will happen.

There will be irreparable damage if you, for the time being, you don't put a body out of business although ultimately it maybe found that you had no business to restrain it all.

Edmon L. Rinehart

I -- I am to assume this fact and this is the only one I understand that the case history of Alabama shows that while they pretend to this nicety of pleading in practice, that in fact when they get one of these important questions where they simply just say, "Well, we're going to look at the thing anyway."

That's -- that's what I am to assume.

Felix Frankfurter

And -- and that -- that they drew the line here that you're asking us to draw the line here but we find the case that as a matter of fact your court did review it -- did review the issues, the federal question that it is here that is sought to be brought here and that therefore it is just (Voice Overlap) --

Edmon L. Rinehart

Then I think that there is -- that the State of Alabama has -- has an extremely dubious case of no federal question.

In other words, that -- that -- but if you can reach this position which I would -- it would seem to me you were heading that they decided to make some sort of an exception in this case.

Then it -- I think it were perilously close to a case which was decided here Monday, this Baxley case.

Charles E. Whittaker

Mr. --

Edmon L. Rinehart

I don't concede entrapment however or springs in this case.

Charles E. Whittaker

Mr. Rinehart, how in Alabama do you raise the question of whether or not a preliminary injunction was legally or illegally entered?

Edmon L. Rinehart

On a motion to dissolve.

Charles E. Whittaker

Well, that's what I thought.

Now, until the motion to resolve has been heard, you have -- you're not out of the trial court and there is nothing yet to review.

Edmon L. Rinehart

That is our contention and that is correct under my understanding of the law.

Charles E. Whittaker

Now, you have two aspects here, one is the temporary injunction but as a collateral appendix to the determination of the question of whether or not the injunction might be maintained.

An argument was entered by the trial court for the production of certain documents.

Edmon L. Rinehart

That is correct.

Charles E. Whittaker

Under the law of Alabama, does the court have an inherent or a statutory power to impose penalty for disobedience of his order?

Edmon L. Rinehart

It has an inherent power.

Charles E. Whittaker

All right.

Now --

Edmon L. Rinehart

And also a statutory in the case of criminal contempt.

Charles E. Whittaker

Now, what's the remedy -- that's final when the penalty is assessed, isn't it?

That's -- that's immediately reviewable whether by appeal, certiorari, mandamus or whatnot, isn't it?

Edmon L. Rinehart

That is correct.

Charles E. Whittaker

Now, how do you get a review on that issue, you say by mandamus, is that right?

Edmon L. Rinehart

Because we break it down into -- into two steps, you have really two ancillary proceedings and ancillary questions.

You have first the validity of the order to produce which is tested by mandamus and secondly, then if they choose to just say as this petitioner did, we're not going to -- we ignore I don't know why they didn't file a petition for writ of mandamus but they did to test only the order to produce and if you then choose the route of saying --

Charles E. Whittaker

Now, to test only the conviction for contempt for disobedience to the order to produce, that's what you mean isn't it?

Edmon L. Rinehart

No.

First, the mandamus goes only to test the validity of the order to produce and maybe commenced anytime after the order is entered and being an interlocutory non-appealable order.

Charles E. Whittaker

Now in Missouri, you would have to do this not by mandamus but by a prohibition.

Now, but in your state, you do it by mandamus.

Edmon L. Rinehart

Frankly, if I may say so, the writ of mandamus and writ of prohibition are -- are -- if I were a purist, I would say often what appears to be mandamus is a writ of prohibition.

Charles E. Whittaker

Now let's go back to the injunction feature, the temporary injunction. How is that reviewed after the motion for -- to dissolve has been overruled?

How do you review that?

Edmon L. Rinehart

By appeal.

Charles E. Whittaker

By a direct appeal.

Edmon L. Rinehart

That is correct.

Felix Frankfurter

Is the certiorari -- one more question.

Is certiorari a discretionary writ in Alabama?

Edmon L. Rinehart

Absolutely and there is a very important point to me in connection with that.

Mr. Justice Brennan.

William J. Brennan, Jr.

I just want to be sure I understand this..

Are you suggesting that on your analysis of the Alabama cases, there is none where in fact in review on certiorari of an order of civil contempt, your Supreme Court has ever reviewed the merits of an order of the underlying order which -- which was disobeyed and upon which the contempt finding was made?

Edmon L. Rinehart

That is correct.

Now, there was a case cited yesterday which I was not personally aware of.

I believe I have that citation 68 So.2d 834, this Armstrong case which is a -- we maintained -- the Court did not look at the merits.

This is one of those cases where they applied for certiorari and it was treated as mandamus.

The case isn't at all that case.

William J. Brennan, Jr.

Well, I -- I'm not addressing myself to that.

I'm addressing myself to what happens when in fact an order of civil contempt is reviewed on writ of certiorari --

Edmon L. Rinehart

Oh this was --

William J. Brennan, Jr.

Does your Supreme Court entertain argument and dispose of any arguments addressed to the validity of the order allege to have been disobeyed.

Edmon L. Rinehart

At Armstrong case, it's the only case that I know of that bears -- that seems to even bear on it.

And that in fact was an appeal from the denial of the Court to hold the man in contempt to take contempt proceeding against and even though he had very possibly on a record violated the order and then they threw in a sort of general prayer on top of the appeal.

And the Court reviewed the portion of the contempt proceedings, they also reviewed other matters on the merits of the whole case as I see it on the appeal feature but specifically on the contempt feature, they said, "Well, as far as this contempt -- pure contempt angle, we will consider to that extent certiorari," and they did in fact.

They didn't look at the merits except to this extent which is the established Alabama law to see whether or not there was a contempt.

William J. Brennan, Jr.

Well, did that involve -- whether or not there was a contempt that is whether or not there was disobedience for the order?

Edmon L. Rinehart

That is correct.

William J. Brennan, Jr.

And to decide whether there's been a disobedience to the order, don't perhaps decide whether the features of the order alleged to have been disobeyed or valid or not?

Edmon L. Rinehart

I see what you're -- absolutely what you're getting at.

William J. Brennan, Jr.

I'm just --

Edmon L. Rinehart

I -- I understand.

William J. Brennan, Jr.

The scope of the actual review on certiorari and a civil contempt proceeding.

Edmon L. Rinehart

In that case, they did in fact told that this was a proper order and as I say, it seem to me they looked at it on the appeal feature.

In other words they appealed -- in this question of appeal whether the order was an order which was proper.

They didn't --

Charles E. Whittaker

In relation to the injunction feature?

Edmon L. Rinehart

Oh, not in our case.

I'm not speaking of that, Mr. Justice Whittaker.

I'm taking about this Armstrong case which was a -- one of this custody of children cases among other things and also a question of accrued alimony.

There are a number of complicating features.

I -- I see the -- not only the drift of the question but you do get sort to that point and all I can say is that as far as the way the Court talks they say we're looking strictly at the face of these contempt proceedings for jurisdiction.

William J. Brennan, Jr.

Well what -- what I'm getting at is -- anyone reading the Alabama cases and finding that in fact on a writ of certiorari, the review of civil contempt order that the Supreme Court of Alabama actually inquires into the validity of the order alleged to have been disobeyed.

Will he not think that that was an appropriate -- he might appropriately believe that the next time he came up by certiorari not only with the contempt itself whether there's been a disobedience but as well whether or not what was disobeyed was valid would be considered by your Supreme Court.

Edmon L. Rinehart

I think that if the case is in fact ran that way I think that you would be correct.

I -- I don't know that -- I don't know of any cases that do go that way.

The Armstrong case has opposed this thing to that.

William J. Brennan, Jr.

Frankly, what I'm addressing myself to, I notice that you have -- your Supreme Court had a per curiam which is in 91 So. 2d 221.

At the time there was an application for stay in the Supreme Court, I think that was the application of July 31st, wasn't it?

Edmon L. Rinehart

I would likely to explain exactly what happened in that case.

They made an application for stay.

There's no petition for certiorari or with any kind of pleading.

They just went up there and said --

William J. Brennan, Jr.

Yes.

Edmon L. Rinehart

“We're in this terrible fix.

There were no facts or anything, just stay in the proceedings.”

And the court said, “We -- when there -- it's a question of a contempt proceeding certiorari -- the contempt proceeding, the review of a contempt proceeding, we have to have a petition for certiorari.”

(Voice Overlap) jurisdiction.

William J. Brennan, Jr.

That's just the point but the way the per curiam reads this, it is the established rule of this Court that the proper method of reviewing a judgment for civil contempt to the kind here involved is by a petition for common law writ of certiorari.

And this Court as through the years upheld to grant the writ for the purposes of review where a reasonable ground for its issuance is properly presented in such petition.

And it was after that decision and that per curiam that the first petition for certiorari, I see it's all on the same page, on August 13 rather cryptically was denied on the ground that the insufficient to warrant the issuance of the writ, the averments of the petitioner insufficient as to say in what respect insufficient.

And then it was followed on August, the petition which led to the judgment and opinion before us and I'm just was wondering how anyone was involved in this very case.

If reading your cases before this one felt that there was going to be a review both of the underlying order as well as of the contempt itself.

I could help but take this as an instruction of your Supreme Court, go ahead and follow the root of writ of certiorari and we will consider both the contempt and the order upon which it would take.

Edmon L. Rinehart

First of all, taking what was actually before the Court in the second petition, it amount -- it had no facts alleged.

They were merely what we can call assignments of error which are set out in our briefs.

I stand corrected on that.

William J. Brennan, Jr.

I can't find any in the record, any of these papers that underlay either those application.

Are they in this record, do you know Mr. Rinehart?

Are they not in (Voice Overlap) --

Edmon L. Rinehart

No they are not in this record.

They are not --

William J. Brennan, Jr.

-- filed with this Court, are they?

Edmon L. Rinehart

They have not.

William J. Brennan, Jr.

None of these underlying papers with --

Edmon L. Rinehart

Not to my knowledge.

The printed record in this case which consists of petition for writ of certiorari in exhibits is the record in the case.

Hugo L. Black

Is the original petition on the writ -- the contempt order was issued in the record before us.

I did not find any --

Edmon L. Rinehart

It is included --

Hugo L. Black

-- state's petition.

Edmon L. Rinehart

The state's petition is included in the record.

Hugo L. Black

Where is it?

Edmon L. Rinehart

Record pages 1, 2 and 3.

William J. Brennan, Jr.

No, that's the petition --

Hugo L. Black

That's their petition.

Edmon L. Rinehart

I -- I stand corrected, what I should say is that this is a synopsis and rather of our petition.

It is not the petition itself, I stand corrected.

The petition itself that we filed in the initial proceedings is not in this record.

William J. Brennan, Jr.

Mr. Rinehart, do you suppose, I don't know if it's appropriate or not.

You tell if me if you don't think so, if you don't believe it is.

Could we have -- provided us the record and all of these applications to your Supreme Court, the petitions that were filed?

Edmon L. Rinehart

I -- I have -- do not have them with me here. I am certain that if as for -- they will all be supplied.

All that was before the Supreme Court was set up that was asked for from the Supreme Court.

Now in addition, there were -- was this initial petition for certiorari -- I'm not addressing myself now to our petition but this initial petition for certiorari which page -- appears at pages 16 and 17 of the record.

I should again qualify that statement by saying that these are the grounds alleged in that and that all that was alleged in it was what I call an assignment of error.

William J. Brennan, Jr.

As I understand -- as I understand, the only one we have here is a petition which was filed on the 20th of August.

Edmon L. Rinehart

That is correct.

William J. Brennan, Jr.

And apparently there was a petition filed somewhere on August the 13th which we do not have and as to which your court -- the Supreme Court said that the averments were insufficient.

Then before that on July 31, there must have been some kind of paper filed in connection with the motion for stay and we don't have that paper either.

Edmon L. Rinehart

That is correct.

We did -- we concurred in the record in this case.

William J. Brennan, Jr.

I notice that from the file in the clerk's office.

Earl Warren

Mr. Rinehart, your time is just about up. I wanted to confess yourself to the merits.

Edmon L. Rinehart

I should be happy to, Your Honor.

Earl Warren

You still have a few moments before you can sit down.

Edmon L. Rinehart

Now, there are really several questions of the merits involved here.

There is first the merit -- the question of the state's power to take any such initial action and we based that on the plenary common law powers of the Attorney General of Alabama to vindicate and enforce the public policy of Alabama concerning the domestication of foreign corporations.

I'm talking about that constitutional provision, Section 232 which is self-implementing.

We think that an Attorney General has the inherent right and in fact --

Hugo L. Black

Where is that printed that constitutional provision?

Edmon L. Rinehart

It is not set out in the briefs, I have it here.

I'm now reading from the Alabama Code of 1940 which also includes the Alabama Constitution, Article XII Section 232.

Hugo L. Black

What does it say?

What is it?

Would you mind reading --

Edmon L. Rinehart

I -- I -- Right now.

"No foreign corporation shall do any business in this state without having at least one known place of business and an authorized agent or agents therein, and without filing that the Secretary of State has certified copy of its articles of incorporation or association.

Such corporation maybe sued in any county where it does business by service of process upon an agent anywhere in the state.

The legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this State.

Strictly benevolent, educational or religious corporations shall not be required to pay such tax.”

Earl Warren

Your time has expired but you have may have five minutes more to summarize -- summarize the merits of the -- you stick to the merits.

Edmon L. Rinehart

I -- I certainly shall.

Earl Warren

Yes.

Edmon L. Rinehart

I was saying that we have the plenary common law powers that the Attorney General of Alabama is a constitutional officer who has the same powers which the Attorney General of Great Britain had at common law.

We depend upon those cases, a long line of cases which say that a corporation doing intrastate business in a state or rather the Supreme Court decisions which say that a corporation maybe prevented doing intrastate business within a state if it hasn't first gone there and conform to the laws of that state.

Hugo L. Black

Is there any law of Alabama which tells a delinquent corporation cannot register -- cannot register?

Edmon L. Rinehart

Absolutely not, no statutory law whatsoever.

Hugo L. Black

In considering the merits, it means that (Inaudible).

You would tell me what issue was left upon which an order could rest (Inaudible)

Edmon L. Rinehart

Whether --

Hugo L. Black

-- after you had, on your petition, you oust these people because they were delinquent after they had offered to file the Secretary's claims, a certificate, which if they have been permitted to file, he could not have (Inaudible).

What issue was left on which orders could be issued in your brief after that?

Edmon L. Rinehart

I -- think that the -- the authority to oust is -- is in the Courts of Alabama to punish -- perhaps punish is not -- is too strong a word, but to -- I believe it is a correct one for having -- for a long period of time ignored our laws and the question of whether in fact they were doing business and how long in the extent and nature of there -- were absolutely essential to the case.

Now, we think that the power to oust for past misconduct included the power to maintain the status quo as between the parties, and that is what this order denying the right to register did.

It's the traditional power of the court of equity.

Hugo L. Black

Had they ever done that?

Edmon L. Rinehart

No.

We've never had an -- we've never had a case like this before.

Hugo L. Black

Never had a case where a corporation was delinquent?

Edmon L. Rinehart

We've had cases where -- where corporations -- oh, I won't say that.

I don't know of anywhere corporations were delinquent in this manner.

There are other constitutional questions -- I don't want to dodge that question, Your Honor.

Hugo L. Black

Well, I don't want to consume all your time on this but I had been wondering if this -- is this -- if they had been permitted to file this registration certificate with the Secretary of State.

He could not have refused it, couldn't he?

Edmon L. Rinehart

There's -- there is a dispute in our opinion which has never been written, I admit.

Our opinion is that he could, first of all, he has the duty to refer it to the franchise tax people for determination of whether or not in fact this is a benevolent corporation within the meaning of the law of exemptions or a charitable and --

Hugo L. Black

And suppose they offered to file these both, could he have refused it?

Edmon L. Rinehart

Oh, he doesn't -- he doesn't in fact accept the filing and it is not accepted until the franchise tax people make a determination as to whether or not there are franchise taxes due.

That's my understanding of the procedure.

Hugo L. Black

Was there any basis for this action originally except that they were delinquent in registration?

Edmon L. Rinehart

That --

Hugo L. Black

The pleadings are not here that's the reason I don't know.

Edmon L. Rinehart

The basis for the action is that they were delinquent -- the basis of the action is a long-term extensive delinquency which we think is in derogation of the rights of the people of Alabama not to have corporations come in, foreign corporations, and just ignore their statutes.

William J. Brennan, Jr.

What do you say about their membership?

Edmon L. Rinehart

You mean why is that relevant?

William J. Brennan, Jr.

Yes, there decision of (Inaudible).

Edmon L. Rinehart

Well, I -- I disagree with that contention entirely.

I don't believe a corporation has any right of privacy and that any case of this Court or -- has ever held any such thing.

I can address myself to that.

I think the recent cases such as Watkins and Sweezy are questions of assertions of individual rights, I see.

Felix Frankfurter

But what -- before you sit down, your doubt is familiar with the joint facet of cases.

Edmon L. Rinehart

Yes, Your Honor.

Felix Frankfurter

And therefore your doubt is familiar with the diversity of views expressed.

Edmon L. Rinehart

I am.

Felix Frankfurter

So that one cannot say that there was anything but a single judgment.

But you will recall, Mr. Justice Jackson, in which he sustain standing to sue on the part of the corporate entities, the non-individual bodies that would be forced in that case on the ground that if the individuals cannot assert their constitutional claim, members, in other words in an organization which is asked to make disclosure and the individuals who are members can't themselves come in to protect what they claim to be a constitutional right without frustrating, without nullifying the very right which they claim by making a disclosure.

But then, the corporate body can assert those individual rights.

In short, assuming that individuals in Alabama, inherently appropriate (Inaudible) and say you can't ask us whether we belong to the N.A.A.C.P, that's a territory that is protected, I'm making that assumption.

Edmon L. Rinehart

I understand.

Felix Frankfurter

Otherwise there's no point.

We -- we can withhold -- we don't have to tell Alabama or New York or anybody else to what club we belong provided that it isn't a tradition to organization.

I'm putting that to one.

That's our constitutional right.

But if we go -- have to go on to court and say, if what you were asking the organization to do make hindrance on my right and by that very proceeding, you nullify your rights.

Then the corporate body having this undisclosable -- this list of undisclosable membership does have a standing to speak for the individual members.

Edmon L. Rinehart

My first answer of course is I don't agree with that portion of the opinion but I will also direct --

Felix Frankfurter

It wasn't an opinion.

It was an individual's opinion.

Edmon L. Rinehart

Individual opinion, that's what I mean, Mr. Justice Jackson.

Felix Frankfurter

He maybe was quite candid in saying that he thought the corporation would not have standing to sue except in this (Inaudible) the individual right does come into action.

Edmon L. Rinehart

All right.

I -- I would -- if I may address myself exactly to that question.

First of all, Mr. Justice Jackson, preliminarily to holding -- making that statement held that a corporation had no right of privacy, that in fact if all the order of the Attorney General in that case had done was hold individual members up to contumely and unpopularity and all of the things which I might say are speculative in the instant case, through speculation, that if that were all, he would say that the corporation did have any standing but that would had happened and remind -- I want to remind you that it was entirely state action.

Both the first and second pressures brought there was entirely state action.

One was the ex parte action of the Attorney General in declaring the organization subversive which I -- insofar there is a majority opinion I would say the basis of it and then you get to the next step which was by virtue of that order, here, where a lot of innocent people who are going to lose jobs automatically state job -- and the jobs which they were going to lose automatically were government jobs so that was obviously government action.

Now I -- perhaps I haven't exactly answered the content -- that is how I explained that decision.

Felix Frankfurter

But I suggest and I suppose what is behind this claim of refusal to disclose the individual members of the N.A.A.C.P. and Alabama.

I've taken that direct to pleading but I take it the thought is and the reason for this claim why the individuals don't step forward is because they are potentially in a damageable condition if they do make disclosure.

That's how they were told.

Edmon L. Rinehart

Damageable from whom is that important question.

First of all, I would want to make a point which bears precisely on --

Felix Frankfurter

Damageable by the State.

Edmon L. Rinehart

Oh, the State isn't going to bring any pressure to bear on these individuals.

Felix Frankfurter

The pressure derived from the fact that the State compelled a disclosure if they may just as it's going to fascist case if one of these organizations and the Attorney General had to make closed.

It would affect people.

It doesn't make any difference whether it's an private employment or public employment so long as the governmental authority takes away something that it can't -- can't take away?

Edmon L. Rinehart

I don't believe that there is anything in the law that says that the mere fact that a person may become unpopular as a result of a disclosure gives him a constitutional right to keep a secret.

Felix Frankfurter

That isn't the implication of my question.

Is it inconceivable that an individual might bring in a -- bring a suit in Alabama and say if I make a disclosure that I'm a member of the N.A.A.C.P., I lose my business.

Is that inconceivable hypothesis?

Edmon L. Rinehart

I -- I have a hard time feeling that that -- there would be probably an embarrassing word of justiciable issue there.

Felix Frankfurter

What -- to lose business?

Edmon L. Rinehart

Unless he can get -- bring it against an alleged extremely specific details in that.

In other words, say that this person is without justification causing me to lose my business.

Felix Frankfurter

Well this person being -- the starting point is that the State of Alabama or any other -- the State of Massachusetts doesn't make a difference so far as I'm concerned, the state is asking me to make a disclosure which I am entitled to withhold and by making such disclosure, my business will be shut down.

The Government isn't shutting down the business but it is taking action which results in the shutting down and that's not justiciable.

Edmon L. Rinehart

Because the -- the thing which may -- which may and that's pure speculation in the allegations in here (Voice Overlap) --

Felix Frankfurter

Well, they can't -- they may not be able to make good on that.

They may not be able to make good on that but if you -- supposed the joint fascist suit that old case turned on the fact that the Attorney General have filed what is practically a demurrer and said -- well suppose everything you say is so, that's the basis on which I have -- one has to meet these legal question.

Edmon L. Rinehart

Sir?

Felix Frankfurter

Assume it's so that John Smith and whatever it is in Alabama -- sometimes Alabama says, "I received a request from the Attorney General to tell him -- to tell me whether I'm a member of N.A.A.C.P. and I refused to do so."

And he says, "Well that's required by some decree of the Court and if I make this disclosure which I'm entitled to refuse to make, I will suffer and my business.

Would that be demurrable?

Edmon L. Rinehart

I believe it would and I will explain why.

I believe neither the Sweezy cases and the Watkins case which seemed to pair on this right to not to have to testify about associations, our answer on this basis that in this case, we have relevancy to a judicial proceeding and we submit an extremely valid judicial proceeding and I might add in this particular --

Felix Frankfurter

You mean mandamus?

Edmon L. Rinehart

No, no, no, to the -- to the central issue in the case whether they're doing business in Alabama and whether they should be ousted.

Felix Frankfurter

But supposed you win on that, and that supposed you can oust the in the meantime, supposed you are entitled to oust them, it doesn't follow from that that individuals may have to make disclosure that they were members of the ousted corporation.

Edmon L. Rinehart

I agree.

Felix Frankfurter

If that -- if they can allege and subsequently prove that in fact the human inevitable consequence is material monetary mundane punishment and their property interest.

Edmon L. Rinehart

I don't think a person has such immunity from testifying in a case that he is properly subpoenaed.

Felix Frankfurter

Well, that's -- that was the demerit of whether such an exertion can be made.

Edmon L. Rinehart

Oh, it does and I -- I can't -- I failed to find any judicial authority for that particular --

Felix Frankfurter

What you're saying is that Alabama tomorrow can subpoena a lot of individuals in this litigation, supposed this proceeds because you're allowed to proceed at the ouster proceeding.

What you're saying is that as a matter of substantive constitutional law, if Alabama's subpoena Smith Jones Robinson and asked him on a -- him or her on the stand, "Are you now or were you a member of N.A.A.C.P.?"

They could not say, Your Honor, in every respect, I decline to answer because I'm protected by the Constitution.

That's what you say is it?

Edmon L. Rinehart

I think that we would have to show that our questions were relevant to the issues in the case.

Felix Frankfurter

I'm assuming there, yes.

Edmon L. Rinehart

I don't believe that he could.

In fact, I -- deny that he could.

Felix Frankfurter

Very well.

Edmon L. Rinehart

I wish I could -- I do not detain anyone further in this matter.

Earl Warren

Mr. Carter.

Robert L. Carter

If the Court please, Mr. Justice Brennan and Mr. Justice Black.

I expressed some interest in some of the pleadings which are not here.

As you know, this was an ancillary proceeding and this was the record which was certified and printed from the court -- the Supreme Court of Alabama.

If the Court desires and with the Court's permission, I would -- could undertake to get the motions and all the other pleadings if that's -- if that is what is desired with respect to the motion to stay and the first petition for writ of certiorari, the bill of complaint filed by the state and our answer.

That's -- if the Court decide for me to do that, I will certainly undertake to do that.

Earl Warren

You have them here?

Robert L. Carter

No, sir.

They -- we do not.

They're in -- in my office in New York and I could have printed it.

That's what the court wants me to do.

Earl Warren

Well, I don't necessary have them printed but if you have a copy of them that can be delivered to our clerk, we do so and if you have any additional documents that you'd like to have filed on the clerk, you may do so also, Mr. Rinehart.

Edmon L. Rinehart

(Inaudible) Your Honor.

Robert L. Carter

I think that the -- the ultimate question -- the preliminary question rather of jurisdiction, of course will be decided by this Court on a reading of the cases but on the questions that were asked to Mr. Rinehart, I would like to direct the Court's attention to page 15, an excerpt from Ex parte Dickens which we set out on page 15 of our petition for writ of certiorari which I think shows without question that on certiorari the Court does go using the validity and the merits of the order which is disobeyed.

We think that --

Felix Frankfurter

It does go, Mr. Rinehart candidly admitted that in fact the Supreme Court goes ahead and talks about things which it says it merely talked about, it does so merely makes speeches because it restricts its decision to what it needs to restrict it to, namely, whether the jurisdictions may gain on the face of the document.

Robert L. Carter

Well --

Felix Frankfurter

In other words -- in other words if the State said we go on this ground -- on the state ground, you follow -- you've taken the wrong attorney, you followed the wrong procedure but we've got lose up here, we talk about things we didn't even talk about and so we make a speech.

Robert L. Carter

I don't think Mr. Justice Frankfurter that a reading of the cases which you applied will sustain that position except here.

On certiorari, the Supreme Court of Alabama talks about First Amendment freedoms -- freedom from privilege of self-incrimination and indicate that this excerpt says that they will go into the merits and if they don't, these opinions are not that we need go no further.

These opinions are clearly on point but as I said, the Court will read the decisions that come to its own conclusions.

William J. Brennan, Jr.

May I ask Mr. Carter, are you suggesting that Dickens, Wheeler, Blakey, Boscowitz, Sellers and Morris support your position, is that it?

Robert L. Carter

Yes, sir.

William J. Brennan, Jr.

And those are the ones you rely on particularly?

Robert L. Carter

Those are the ones that we rely on.

William J. Brennan, Jr.

What about Armstrong?

Robert L. Carter

Well the Armstrong -- the reason I say that the Armstrong case was the -- merely to show that at times the Supreme Court of Alabama has treated these various papers file as even though they would call something else that treated them as the proper paper.

In other words, Armstrong could have come up or should have come up to Alabama instead on certiorari.

It was to call the petition for writ of mandamus and the Supreme Court of Alabama said, "We will treat as a petition --

William J. Brennan, Jr.

Well, it said the affirmance, as I read it, were sufficient so that it might be considered as a petition for certiorari.

Robert L. Carter

Because of the fact that in the Alabama pleadings, one asked on these pleadings for such other and further relief as the Court may deem appropriate.

On the basis of that, the Supreme Court of Alabama said that we will treat this as a petition for writ of certiorari which crosses an entirely different question and we merely raised this to show that the procedure is not as strict on this issue as -- as the state attempts to maintain.

Hugo L. Black

On what -- on what did you -- from what did you take your petition for certiorari in the Court -- the Supreme Court --

Robert L. Carter

We took our petition for writ of certiorari to the Supreme Court from the interlocutory or the restraining order from the first and second adjudications of contempt.

Hugo L. Black

That's the contempt?

Robert L. Carter

Yes.

Hugo L. Black

As the Supreme Court of Alabama unless at this case, made a specific repudiation on what it said in *Ex parte Dickens*?

Robert L. Carter

No, sir.

Hugo L. Black

In that case, they head up the question of certiorari as a proper remedy for -- to review contempt.

The Court said, "We think that certiorari has a better remedy than mandamus, because the office of a mandamus is to require the lower court adjudge an act and not to correct error as the reverse -- on a reversed judicial action.

And that's been referred to in litigation?

Robert L. Carter

That has not been repudiated.

That has been the laws, we understood it until the decision in this case.

Hugo L. Black

So far as this case referred to in the, you say the Supreme Court?

Robert L. Carter

Ex parte Dickens was referred to in the decision of the Supreme Court.

Hugo L. Black

In this case.

Robert L. Carter

In this case.

Hugo L. Black

What -- what was said about it?

Robert L. Carter

(Inaudible) Beginning on page 24 of the last paragraph, the Court says -- of the record -- I'm sorry.

Hugo L. Black

Of the record.

Robert L. Carter

Of the record, yes.

Well, we've set out the Court's opinion.

The Court says, "On the petition for certiorari, the sole and only reviewable order or decree is that which adjudged the petitioner to be in contempt. Certiorari cannot be made a substitute for an appeal or other method of review.

Certiorari lies to review an order of judgment of contempt for the reason that there is no other method of review citing Ex parte Dickens.

Hugo L. Black

They also referred to and they distinguished it on the ground that one would show them on one criminal contempt?

Robert L. Carter

They -- as I understand the decision here, they -- the distinction between civil and criminal contempt is not the reach of certiorari but the question of what fine the court below may impose.

In criminal contempt on Alabama law, the Court is limited by statutes to the amount of fine that for an individual, they can across toward an individual order and across with five days and a fine of \$50.

On civil contempt, the court's power is unlimited to the -- to the kind of punishment it may impose and this was the distinction which apparently the -- which apparently to which the Court makes with respect to this case.

As we read the decision on Ex parte Dickens as referred to throughout the opinion, the Court was really misquoting and misciting its own decisions because Ex parte Dickens specifically says that certiorari used to be limited by jurisdiction of the questions of jurisdiction but now it could reach the question of the merits.

I assume my time is up but I just wanted --

Earl Warren

You may -- you may have five minutes if you wish to -- to summarize your -- your argument Mr. --

Robert L. Carter

Thank you.

Well, our position here in our contentions that this is not appropriately a proceeding to require us out to register.

I think that's clear from what was said today and it's clear from the papers and what has been -- what has happened in this case.

If the Alabama wanted the corporation to register, we offered to register and we would have done so.

Now, so this is really not what this case is all about.

We think that Alabama, because of the ideas which we expose that Alabama has sought to use the far failure to register which they knew for a long number of years and which has been very obvious in Alabama for -- for many years, our failure to register as a -- as a device to suppress the organization and to get ousters from the State.

Felix Frankfurter

I -- I don't want to take your time but I understand why you're arguing this because unless I completely misunderstood Mr. Rinehart, the State isn't arguing here that we have to pass on Alabama's right of ouster.

That isn't the issue at all.

Robert L. Carter

Well, I understand the --

Felix Frankfurter

The -- the issue here is the validity of the contempt order as against certain constitutional claim, is that right?

Robert L. Carter

Yes, sir.

But our position is, if the Court please, that at the very outset, the Alabama court, the Court in this instance took illegal action because the only action that we are aware of that Alabama could exert against the corporation for failure to register was the action which is the statutory penalties which are set out on our brief at page 35.

So, we are faced at the very outset, we're being put out of business without a hearing and then being ordered as a condition of -- of having a hearing on the merits.

Of that -- at that point, we are then required to either submit to what we consider unconstitutional conditions or in effect stay ousted and have a final judgment entered against us in effect because we cannot prosecute this claim until the contempt proceedings had been finally adjudicated.

As I indicated yesterday, our view is that the order requiring our members to -- requiring a production of the names of our members has no relevance to the question as to whether or not we are doing business in the state and particularly we believe this is so since we have taken that issue out of the case by ourselves indicating to the state that we are willing to comply with the law insofar as registration is concerned.

Charles E. Whittaker

Did you know Mr. Carter that the court's order of requiring such and that order stands until vacated by some procedure which Alabama (Inaudible)?

Robert L. Carter

Yes, sir.

Charles E. Whittaker

Or whether the -- until it's at least raised in some way which the Alabama law specifies.

Robert L. Carter

Are you -- you're talking of the temporary restraining order?

Charles E. Whittaker

Yes.

I know -- first thing I know.

Now, I'm talking about the order to produce.

Robert L. Carter

Yes, sir.

Yes, sir (Voice Overlap) --

Charles E. Whittaker

And this is the same thing too on the temporary restraining order.

There, it was -- the Court has jurisdiction and power to handle it, the trial court whether it's right or wrong.

Now, until a motion to dissolve, it has been denied (Inaudible) that Court, no way to go -- any place else and -- isn't that right? And therefore you haven't -- can't have a review of that temporary injunction until you have had an order of willing the motion to dissolve.

Robert L. Carter

Well, we think that that order was put in issue, necessarily put in issue by the opinion of the Supreme Court of Alabama which indicated that the Court below had jurisdiction that when it went to the question that we contend that it had no jurisdiction to oust this from the state on the

basis of this pleading and that therefore the temporary restraining order is that issue because we raised it in the Supreme Court of Alabama.

In other words, we think that not only is that Alabama wrong in ordering us to produce the names of our members but we think that at the outset, the state court was wrong in dissolving in fact, barring us from the State without a hearing because our contention is that there is no authority under the Alabama law and on the basis of this record for this to be done.

Charles E. Whittaker

But the thing that you say barred you from Alabama was the temporary injunction.

Robert L. Carter

Yes, sir.

Charles E. Whittaker

Can -- is that before us, can there be a review of the evidence and to point out until a motion to dissolve it has been presented and denied.

Robert L. Carter

Well, our theory, if the Court please, our theory is that it is before --- properly before the Court because Alabama acted arbitrarily in the first instance.

Charles E. Whittaker

In issuing the order?

Robert L. Carter

And that -- in issuing the temporary restraining order on the basis of this record that there was no jurisdiction.

Charles E. Whittaker

No jurisdiction in the Court at all?

Robert L. Carter

Well, our contention is that there is no jurisdiction in Alabama Court to do what the restrainer under the basis -- on the basis of this record as a bond corporation or our failure to register.

This is our contention and that we -- and that when the Court -- the Supreme Court of Alabama sustained jurisdiction that it necessarily approve the jurisdiction of the Court in this respect and that is before the Court here.

Charles E. Whittaker

Well, I think that it naturally follows if the court had no jurisdiction (Inaudible) then everything it did was of nullity.

Robert L. Carter

Well, our view is -- that is our view of course.

Our view is that they have no right.

That the only thing that the --

Charles E. Whittaker

Am I right, no jurisdiction?

Robert L. Carter

No jurisdiction, that the only power that the Alabama has upon the basis of our failure to register was to, one, require us to register or issues the statutory penalty set out in page 35 of our brief.