

Sec. 5—Powers and Duties of the Houses

Cls. 1–4—Judging Elections

fense against the United States for a Member, during his time in office, to receive compensation for services before a government department in relation to proceedings in which the United States is interested. Such a statute was found not to interfere with the legitimate authority of the Senate or House over its own Members.⁴¹⁸ In upholding the power of the Senate to investigate charges that some Senators had been speculating in sugar stocks during the consideration of a tariff bill, the Supreme Court asserted that “the right to expel extends to all cases where the offence is such as in the judgment of the Senate is inconsistent with the trust and duty of a Member.”⁴¹⁹ It cited with apparent approval the action of the Senate in expelling William Blount in 1797 for attempting to seduce from his duty a United States agent working as an interpreter among the Indians and for negotiating for services among the Indians on behalf of the British Government—conduct which was not a “statutable offense” and which was not committed in his official character nor during the session of Congress, nor at the seat of government.⁴²⁰

The power of Congress over its Members, however, does not extend to excluding a Member for misconduct before they have been seated. In *Powell v. McCormack*,⁴²¹ a suit challenging the exclusion of a Member-elect from the House of Representatives, it was argued that, because the vote to exclude was actually in excess of two-thirds of the Members, it should be treated simply as an expulsion. The Court rejected this argument, noting that House precedents established that the House had no power to expel for misconduct occurring prior to Congress in which the expulsion was proposed, as was the case of Mr. Powell’s alleged misconduct. The Court based its rejection on its inability to conclude that if the Members of the House had been voting to expel, they would still have cast an affirmative vote in excess of two-thirds.⁴²²

Duty To Keep a Journal

The object of the clause requiring the keeping of a Journal is “to insure publicity to the proceedings of the legislature, and a correspondent responsibility of the members to their respective constituents.”⁴²³ When the Journal of either House is put in evidence

⁴¹⁸ *Burton v. United States*, 202 U.S. 344 (1906).

⁴¹⁹ *In re Chapman*, 166 U.S. 661 (1897).

⁴²⁰ 166 U.S. at 669–70. See 2 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 836 (1833).

⁴²¹ 395 U.S. 486 (1969).

⁴²² 395 U.S. at 506–12.

⁴²³ 2 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 840 (1833), quoted with approval in *Field v. Clark*, 143 U.S. 649, 670 (1892).