

Sec. 1—The Congress

Legislative Powers

which stated in broad terms the right of either branch of the legislature to attach and punish a person (other than a Member) for contempt of its authority.²⁶⁹ The right to punish a contumacious witness was conceded in *Marshall v. Gordon*,²⁷⁰ although the Court there held that the implied power to deal with contempt did not extend to the arrest of a person who published matter defamatory of the House.

The cases emphasize that the power to punish for contempt rests upon the right of self-preservation. That is, in the words of Chief Justice White, “the right to prevent acts which in and of themselves inherently obstruct or prevent the discharge of legislative duty or the refusal to do that which there is inherent legislative power to compel in order that legislative functions may be performed” necessitates the contempt power.²⁷¹ Thus, in *Jurney v. MacCracken*,²⁷² the Court turned aside an argument that the Senate had no power to punish a witness who, having been commanded to produce papers, destroyed them after service of the subpoena. The punishment would not be efficacious in obtaining the papers in this particular case, but the power to punish for a past contempt is an appropriate means of vindicating “the established and essential privilege of requiring the production of evidence.”²⁷³

Under the rule laid down by *Anderson v. Dunn*,²⁷⁴ imprisonment by one of the houses of Congress could not extend beyond the adjournment of the body which ordered it. Because of this limitation and because contempt trials before the bar of the House charging were time-consuming, in 1857 Congress enacted a statute providing for criminal process in the federal courts with prescribed penalties for contempt of Congress.²⁷⁵ The Supreme Court has held that the purpose of this statute is merely supplementary of the power retained by Congress, and all constitutional objections to it were overruled. “We grant that Congress could not divest itself, or either

²⁶⁹ The contempt consisted of an alleged attempt to bribe a Member of the House for his assistance in passing a claims bill. The case was a civil suit brought by Anderson against the Sergeant at Arms of the House for assault and battery and false imprisonment. *Cf. Kilbourn v. Thompson*, 103 U.S. 168 (1881). The power of a legislative body to punish for contempt one who disrupts legislative business was reaffirmed in *Groppi v. Leslie*, 404 U.S. 496 (1972), but a unanimous Court there held that due process required a legislative body to give a contemnor notice and an opportunity to be heard prior to conviction and sentencing. Although this case dealt with a state legislature, there is no question it would apply to Congress as well.

²⁷⁰ 243 U.S. 521 (1917).

²⁷¹ 243 U.S. at 542.

²⁷² 294 U.S. 125 (1935).

²⁷³ 294 U.S. at 150.

²⁷⁴ 19 U.S. (6 Wheat.) 204 (1821).

²⁷⁵ Act of January 24, 1857, 11 Stat. 155. With minor modification, this statute is now 2 U.S.C. § 192.