

Sec. 1—Judicial Power, Courts, Judges

judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.” Expressing doubts concerning the validity of the act as to the Supreme Court, he declared, however, that there could be no question of its validity as applied to the lower courts on the ground that they are created by Congress and that their “powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction.”¹⁹⁵ With the passage of time, later adjudications, especially after 1890, came to place more emphasis on the inherent power of courts to punish contempts than upon the power of Congress to regulate summary attachment.

By 1911, the Court was saying that the contempt power must be exercised by a court without referring the issues of fact or law to another tribunal or to a jury in the same tribunal.¹⁹⁶ In *Michaelson v. United States*,¹⁹⁷ the Court intentionally placed a narrow interpretation upon those sections of the Clayton Act¹⁹⁸ relating to punishment for contempt of court by disobedience of injunctions in labor disputes. The sections in question provided for a jury upon the demand of the accused in contempt cases in which the acts committed in violation of district court orders also constituted a crime under the laws of the United States or of those of the state where they were committed. Although Justice Sutherland reaffirmed earlier rulings establishing the authority of Congress to regulate the contempt power, he went on to qualify this authority and declared that “the attributes which inhere in the power [to punish contempt] and are inseparable from it can neither be abrogated nor rendered practically inoperative.” The Court mentioned specifically “the power to deal summarily with contempt committed in the presence of the courts or so near thereto as to obstruct the administration of justice,” and the power to enforce mandatory decrees by coercive means.¹⁹⁹ This latter power, to enforce, the Court has held, includes the authority to appoint private counsel to prosecute a criminal contempt.²⁰⁰ Although the contempt power may be inherent, it

¹⁹⁵ 86 U.S. at 505–11.

¹⁹⁶ *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 450 (1911). See also *In re Debs*, 158 U.S. 564, 595 (1895).

¹⁹⁷ 266 U.S. 42 (1924).

¹⁹⁸ 38 Stat. 730, 738 (1914).

¹⁹⁹ 266 U.S. at 65–66. See Frankfurter and Landis, *Power of Congress Over Procedure in Criminal Contempts in ‘Inferior’ Federal Courts: A Study in Separation of Powers*, 37 HARV. L. REV. 1010 (1924).

²⁰⁰ *Young v. United States ex rel. Vuitton*, 481 U.S. 787, 793–801 (1987). However, the Court, invoking its supervisory power, instructed the lower federal courts first to request the United States Attorney to prosecute a criminal contempt and