Chapter CXXX.

DIVISION OF THE QUESTION FOR VOTING.

6106. The parliamentary law relating to the division of the question.— Section XXXVI of Jefferson's Manual, which has been largely superseded by the rule and practice of the House, provides:

If a question contain more parts than one it may be divided into two or more questions. (Mem. in Hakew., 29.) But not as the right of an individual member, but with the consent of the House. For who is to decide whether a question is complicated or not—where it is complicated—into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House, on a question, unless the House orders it to be divided; as, on the question, December 2, 1640, making void the election of the knights for Worcester, on a motion it was resolved to make two questions of it, to wit, one on each knight. (2 Hats., 85, 86.) So, wherever there are several names in a question, they may be divided and put one by one. (9 Grey, 444.) So, 1729, April 17, on an objection that a question was complicated, it was separated by amendment. (2 Hats., 79.)

The soundness of these observations will be evident from the embarrassments produced by the XVIII rule of the Senate,[3] which says, "if the question in debate contains several points, any Member may have the same divided."

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[1] Example of difficulties where a proposition does not embody two substantive propositions. (Sec. 1725 of Vol. III.)

As to division of a resolution affecting several claimants to a seat. (Sec. 623 of Vol. I.)

Division granted on questions of removal and disqualification in voting in final judgment in Humphreys impeachment trial. (Sec. 2397 of Vol. III.)

[2] As to reconsideration of a question that has been divided for the vote. (Sec. 5609 of this volume.)

[3] This rule is as follows:

"If the question in debate contains several propositions, any Senator may have the same divided, except a motion to strike out and insert, which shall not be divided; but the rejection of a motion to strike out and insert one proposition shall not prevent a motion to strike out and insert a different proposition; nor shall it prevent a motion simply to strike out; nor shall the rejection of a motion to strike out prevent a motion to strike out and insert. But pending a motion to strike out and insert, the part to be stricken out and the part to be inserted shall each be regarded for the purpose of amendment as a question; and motions to amend the part to be stricken out shall have precedence."

1798, May 30, the alien bill in quasi committee. To a section and proviso in the original, had been added two new provisos by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section and the provisos, they can not be divided so as to put the last member to question by itself, for the provisos might thus be left standing alone as exceptions to a rule when the rule is taken away; or the new provisos might be left to a second question, after having been decided on once before at the same reading, which is contrary to rule. But the question must be on striking out the last member of the section as amended. This sweeps away the exceptions with the rule, and relieves from inconsistence. A question to be divisible must comprehend points so distinct and entire that one of them being taken away, the other may stand entire. But a proviso or exception, without an enacting clause, does not contain an entire point or proposition.

May 31.—The same bill being before the Senate. There was a proviso that the bill should not extend—(1) to any foreign minister; nor (2) to any person to whom the President should give a passport; nor (3) to any alien merchant conforming himself to such regulations as the President shall prescribe; and a division of the question into its simplest elements was called for. It was divided into four parts, the fourth taking in the words "conforming himself," etc. It was objected that the words "any alien merchant," could not be separated from their modifying words, "conforming," etc., because these words, if left by themselves, contain no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the House having, on the question, retained the two first divisions, the words "any alien merchant" may be struck out, and their modifying words will then attach themselves to the preceding description of persons, and become a modification of that description.

When a question is divided, after the question on the first member, the second is open to debate and amendment; because it is a known rule that a person may rise and speak at any time before the question has been completely decided, by putting the negative as well as the affirmative side. But the question is not completely put when the vote has been taken on the first member only. One-half of the question, both affirmative and negative, remains still to be put. (See Execut. Jour., June 25, 1795.) The same decision by President Adams.

6107. A question may be divided for the vote if it contain more than one substantive proposition.

A question that is divisible may be divided for the vote on the demand of any Member.

Present form and history of section 6 of Rule XVI.

Section 6 of Rule XVI provides:

On the demand of any Member, before the question is put, a question shall be divided if it include propositions so distinct in substance that one being taken away a substantive proposition shall remain.

This is the form agreed to in the revision of 1880.[1] It was taken with no material change from the old rule, No. 46, which existed at that time.

The rule for the division of the question is older than the House itself. The Continental Congress had this rule:[2]

If a question in debate contain several points, any Member may have the same divided.

When the first rules of the House were adopted, on April 7, 1789,[3] the rule took this form:

Any Member may call for a division of the question where the sense will admit of it.

As this rule was construed, its working was not wholly satisfactory, as a division of the question would be made in cases where, if the first portion should be

[1] Second session Forty-sixth Congress, Record, p. 206.

[2] See Journal of Continental Congress, May 26, 1778.

[3] First session First Congress, Journal, p. 9.

decided in the negative, the second portion would have to be abandoned because it would not be, alone, a substantive proposition. Thus on March 27, 1792,[1] on a resolution calling for an inquiry into the defeat of General St. Clair, a division of the question was called for, and it was put first on the first clause, which was—

Resolved, That the President of the United States be requested to institute an inquiry into the causes of the late defeat of the Army under the command of Major-General St. Clair.

This was decided in the negative. Then of course there could be no object in voting on the remainder: "and also into the causes of the detentions or delays which are suggested to have attended," etc.; and the House simply abandoned the latter portion.

Undoubtedly to remedy this awkward practice, the House on March 13, 1822,[2] adopted this rule:

Any Member may call for a division of the question, which shall be divided if it comprehends questions so distinct that one being taken away the rest may stand entire for the decision of the House.

On September 15, 1837,[3] the House discarded this rule and adopted the form which, with no material change, became, in 1880, the present rule.

6108. A resolution may not be divided when one of the portions, if required to stand alone, would not make a substantive proposition.—On July 4, 1836,[4] the House was considering a resolution relating to the suspension of one of the then existing joint rules, and Mr. John Quincy Adams, of Massachusetts, called for a division of the question, so as to vote separately on the two parts of the resolution, to wit:

To vote, first, on so much of the resolution as follows:

Resolved, That the seventeenth joint rule of the two Houses, which declares that no bill or resolution that shall have passed the House of Representatives and the Senate shall be presented to the President of the United States for his approbation on the last day of the session, be suspended until the hour of 12 o'clock this day, so far as to embrace those bills which have passed the two Houses.

And to vote, secondly, on the remainder of the resolution, which was as follows:

And so far as regards the bill (H. R. 258) to extend the jurisdiction of the corporation of the city of Washington, etc.; and so far as relates to the resolution of the Senate respecting certain acts of the Territorial legislature of Florida; and so far as relates to an act supplementary, etc., to the act to amend the judicial system of the United States; and the bill (No. 108) entitled "An act to alter and amend the several acts imposing duties on imports, approved the 14th day of July, 1832."

The Speaker[5] I decided that according to the thirty-eighth rule of the House the question was not divisible in the manner proposed, because if the first member of the question was not adopted by the House the other and latter member did not comprehend a question so distinct that, the first being taken away, the other would stand entire for the decision of the House.

Mr. George Evans, of Maine, having appealed, the decision of the Chair was sustained.

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[1] First session Second Congress, Journal, p. 551.

[2] First session Seventeenth Congress, Journal, p. 350.

[3] First session Twenty-fifth Congress, Cong. Globe, p. 34.

[4] First session Twenty-fourth Congress, Journal, p. 1215; Debates, p. 4620.

[5] James K. Polk, of Tennessee, Speaker.

6109. On February 17, 1860,[1] Mr. W. Porcher Miles, of South Carolina, submitted as a question of privilege the following resolution:

Resolved, That a select committee, consisting of three members, be appointed by the Speaker to inquire into the expediency of removing the benches or seats from the Hall and replacing the chairs and desks, and also the length of time and cost that it will require to make such change, and that said committee have leave to report at any time, and that in the meantime the Doorkeeper be directed to enforce the order of the House at the last Congress in regard to said chairs and desks.

Mr. John McQueen, of South Carolina, called for a division of the question, as the first portion provided for the appointment of a committee and the latter portion gave directions to the Doorkeeper.

The Speaker[2] decided that the resolution was not divisible.

6110. On December 19, 1864,[3] the House was considering the following resolution:

Resolved, That Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States, as well in the recognition of new powers as in other matters; and it is the constitutional duty of the Executive Department to respect that policy, not less in diplomatic negotiations than in the use of national force when authorized by law; and the propriety of any declaration of foreign policy by Congress is sufficiently proved by the vote which pronounces it; and such proposition, while pending and undetermined, is not a fit topic of diplomatic explanation with any foreign power.

Mr. John V. L. Pruyn, of New York, proposed a division, so as to vote separately on the last clause—"and such proposition, while pending," etc.

The Speaker[4] held such division inadmissible, because if the first portion should be decided in the negative the last clause would not constitute a substantive proposition.

But on the demand of Mr. James F. Wilson, of Iowa, the Speaker allowed a division on the first portion down to the first semicolon, and then a vote on the remainder, holding that these two Portions constituted two substantive propositions.

6111. On August 18, 1842,[5] Mr. Millard Fillmore, of New York, from the Committee on Ways and Means, reported the following resolution:

Resolved, That it is expedient to pass another revenue bill, the same as that which recently passed both Houses of Congress and has been returned by the President of the United States, with his objections, to this House and, on reconsideration, lost for want of a constitutional majority, entitled "An act to provide revenue from imports, and to change and modify existing laws imposing duties on imports, and for other purposes," with the exception of the twenty-seventh section of said bill, which repeals the proviso to the land distribution act, and so modified as to make tea imported in American vessels from beyond the Cape of Good Hope, and coffee, free from duty; and that the Committee on Ways and Means be, and they are hereby, instructed to report such a bill to this House with all convenient dispatch.

A division of the question was called for, so as to take the question, first, on reporting the bill and, secondly, on the details or provisions of the bill.

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[1] First session Thirty-sixth Congress, Journal, pp. 331, 332; Globe, pp. 829, 830.

[2] William Pennington, of New Jersey, Speaker.

[3] Second session Thirty-eighth Congress, Globe, p. 66.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] Second session Twenty-seventh Congress, Journal, p. 1358; Globe, p. 912.

The Speaker[1] decided that the resolution was not susceptible of such division, since, should the first portion be rejected, there would be no sense in the remainder.

Mr. Samuel L. Hays, of Virginia, having appealed, the appeal was laid on the table.

6112. On April 5, 1852,[2] the House was considering the following resolution:

Resolved, That we recognize the binding efficacy of the compromises of the Constitution, and believe it to be the intention of the people generally, as we hereby declare it to be ours individually, to abide such compromises and to sustain the laws necessary to carry them out—the provision for the delivery of fugitive slaves and the act of the last Congress for that purpose included—and that we deprecate all further agitations of questions growing out of that provision, of the questions embraced in the acts of the last Congress known as the compromise, and of questions generally connected with the institution of slavery as unnecessary, useless, and dangerous.

Mr. Edward Stanly, of North Carolina, demanded a division of the question, so as to vote first on that portion of the resolution down to and including the word "included."

The Speaker[3] admitted that the first portion would be a substantive proposition, but asked how the second portion would be if the first should be disagreed to. It would read:

Resolved, And that we deprecate all further agitation of questions growing out of that provision, etc.

Mr. Stanly thereupon withdrew his demand, admitting that the second proposition could not stand alone.

Thereupon Mr. Humphrey Marshall, of Kentucky, demanded a division, so as to vote first on that portion down to and including the words "carry them out."

The Speaker ruled such a division out of order, since, if the first portion should be disagreed to the remainder would read:

Resolved, The provision for the delivery of fugitive slaves and the act of the last Congress for that purpose included—and that we deprecate all further agitation of questions growing out of that provision, etc.

Mr. Marshall suggested that if the Speaker could supply the word "Resolved," he might supply other words to perfect the sense; but the suggestion was overruled.

Mr. Marshall having appealed, the appeal was laid on the table.

6113. On May 28, 1830,[4] the House was considering a resolution:

Resolved by the Senate and House of Representatives of the United States of America Congress assembled, That the sixteenth joint rule of the two Houses be suspended for the purpose of enabling the House of Representatives to send this day to the Senate, for their concurrence, bills of the titles contained in the schedule hereunto annexed, which passed the House yesterday, too late to be sent to the Senate for concurrence before the adjournment of that body, viz: [here follow the titles of eight bills, one of which was the bill (H. R. 474) "to reduce the duty on salt"].

Mr. John W. Taylor, of New York, called for a division of the question, so that a separate vote might be taken on the salt bill.

The Speaker[5] decided that the question was not divisible.

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[1] John White, of Kentucky, Speaker.

[2] First session Thirty-second Congress, Journal, P. 553; Globe, p. 981.

[3] Linn Boyd, of Kentucky, Speaker.

[4] First session Twenty-first Congress, Journal, p. 758.

[5] Andrew Stevenson, of Virginia, Speaker.

Mr. Taylor having appealed from this decision, the Chair was sustained, yeas 97, nays 67.

6114. A resolution may be divided if it contain two substantive propositions, even though action according to such division may necessitate the supplying of formal words, such as "resolved."—On February 3, 1848,[1] the House was considering a series of resolutions reported from the Committee of the Whole House on the state of the Union providing for the reference of the various portions of the President's annual message to committees. When the eighth of these resolutions had been read, Mr. Alexander H. Stephens, of Georgia, demanded a division of the question, and the Speaker[2] granted it. So the question was taken first on so much of the resolution as follows:

Eighth. That so much of said message as relates to the revenue; to the public debt—to the increase thereof; to the creation of a sinking fund; to a duty on tea and coffee; to the collection, safe-keeping, and disbursement of the public moneys; to the coinage and the establishment of a branch mint at the city of New York; to the amendment of the subtreasury act; to the estimated expenditures of the Government, be referred to the Committee on Ways and Means.

This portion having been agreed to, the question was next taken on the second branch, as follows:

And that said committee be instructed to inquire into the expediency of raising annually, during the continuance of the war with Mexico, and until the payment of the public debt, the sum of five millions of dollars, to be assessed on personal and other property, stocks, and money at interest, and apportioned among the several States, as provided by the Constitution.

The question being taken, this resolution was disagreed to, yeas 47, nays 139.

6115. On January 6, 1868,[3] Mr. Cadwallader C. Washburn, of Wisconsin, offered the following resolution, which, under the operation of the previous question, was agreed to, yeas 80, nays 27, on the vote on the first portion, and yeas 82, days 24, on the second portion:

Resolved, That this House utterly condemns the conduct of Andrew Johnson, Acting President of the United States, for his action in removing that gallant soldier, Major-General P. H. Sheridan, from the command of the fifth military district; and that the thanks of this House are due to General U. S. Grant, commanding the armies of the United States, for his letter of August last, addressed to the said Acting President, in relation to the removal of Hon. E. M. Stanton and of General Sheridan, as well as for his endorsement on a letter of General Sheridan, dated January 25, 1867, in relation to matters in Texas.

When this resolution was offered, Mr. John W. Chanler, of New York, asked if the resolution was divisible.

The Speaker[4] said:

The resolution is divisible.

Thereupon the vote was taken first on the portion beginning with the resolving clause and extending to the semicolon. Then the vote was taken on that portion following the semicolon.

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[1] First session Thirtieth Congress, Journal, p. 347; Globe, p. 298.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] Second session Fortieth Congress, Journal, pp. 145–146; Globe, p. 332.

[4] Schuyler Colfax, of Indiana, Speaker.

6116. On June 11, 1870,[1] Mr. William B. Allison, of Iowa, submitted the following:

Resolved, That the matter of privilege, being an assault upon Hon. Charles H. Porter, be referred to the Judiciary Committee of this House for examination, and report what action this House should take in the premises; that the committee have power to send for persons, and papers, and that in the meantime the person at the bar be retained in the control of the Sergeant-at-Arms.

Mr. Samuel J. Randall, of Pennsylvania, demanded a division of the resolution, so as to vote separately on the words:

And that in the meantime the person at the bar be retained in the custody of the Sergeant-at-Arms.

The Speaker[2] I permitted such a division, and the question was taken, first on the first portion, and then on the words above quoted.

6117. On March 4, 1871,[3] during the consideration of the credentials of the Members-elect from the State of Mississippi, Mr. John A. Bingham, of Ohio, moved:

That the credentials of the Members-elect from the State of Mississippi be referred to the Committee on Elections, and that they now be sworn in.

Mr. Michael C. Kerr, of Ohio, rising to a parliamentary inquiry, asked if the motion could be divided.

The Speaker[2] said:

It presents two substantive propositions, and is divisible.

Accordingly the question was taken on the portion referring the credentials, and then on the portion providing for the swearing in of the Members-elect.

6118. On December 5, 1881,[4] the House was considering the following resolution:

Resolved, That George W. Hooker, of the State of Vermont, be, and he is hereby, elected Sergeant-at-Arms of the House of Representatives of the Forty-seventh Congress; that Walter P. Brownlow, of the State of Tennessee, be, and he is hereby, elected Doorkeeper of the House of Representatives of the Forty-seventh Congress; that Henry Sherwood, of the State of Michigan, be, and he is hereby, elected Postmaster of the House of Representatives of the Forty-seventh Congress, and that Rev. Fred D. Power, of the State of Virginia, be, and he is hereby, elected Chaplain of the House of Representatives of the Forty-seventh Congress.

Mr. William M. Springer, of Illinois, demanded a division of the question, so that a separate vote might be taken on the election of Chaplain.

The Speaker[5] said:

The Chair is of opinion that a division of the question may be bad on a resolution of this kind.[6]

6119. A Senate decision that a resolution, on demand for a division, should be divided according to its verbal construction rather than according to its legislative proposition.

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[1] Second session Forty-first Congress, Journal, pp. 965, 966; Globe, p. 4352.

[2] James G. Blaine, of Maine, Speaker.

[3] First session Forty-second Congress, Journal, p. 10; Globe, p. 10.

[4] First session Forty-seventh Congress, Record, p. 16; Journal, pp. 14, 16.

[5] J. Warren Keifer, of Ohio, Speaker.

[6] A ruling illustrating the old system of dividing the question may be found in the proceedings of February 8, 1836. (First session Twenty-fourth Congress, Journal, pp. 1402, 1403.)

A resolution need not necessarily be divided because it affects the titles of the seats of two Senators from different States, with different questions involved.

On April 6, 1871,[1] the Senate were considering a single resolution providing that two persons bearing credentials, one from the State of Alabama and the other from the State of Georgia, should be admitted to seats.

Mr. Allen G. Thurman, of Ohio, had raised a question of order that the resolution should be divided, since it was contrary to parliamentary usage to embody in one resolution the cases of two persons from different States. He had therefore demanded a division of the resolution.

The Vice-President[2] ruled:

The Chair rules that, in his opinion, this resolution is susceptible of division, but not, perhaps, in the way the Senator from Ohio desires. It has in it two distinct substantive propositions, divided by a semicolon.

"Resolved, That George Goldthwaite and Foster Blodgett be permitted to take seats in this body upon taking the proper oath;"—

That clearly could stand by itself; and then the resolution proceeds with a second proposition:

"and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which their rights to seats respectively are contested, and hereafter make reports to the Senate thereon."

This alone is a substantive proposition which could stand by itself if the other were rejected, though it might require more precision in language before its final adoption.

The Chair concurs with the Senator from Ohio in his remarks sometime since, that it does not need that either part of a resolution sought to be divided on the demand of any Member shall be strictly grammatical: but it must be substantive, so as to stand by itself, the other being taken away or rejected; and therefore the conjunctive and disjunctive words "and" and "or" are always excluded from the consideration of presiding officers in determining whether resolutions can be divided, as they are used simply to connect together the various substantial parts of a sentence which may be divided. The Senator from Ohio, however, as the Chair understands, desires this resolution to be divided by separating the cases of Goldthwaite and Blodgett. The Chair must, therefore, to carry out the idea of the Senator, ask him to divide this resolution as it stands into two distinct and substantive propositions, either of which being rejected the other can stand by itself. Jefferson's Manual lays down the rule in regard to this matter in much terser and more precise language than the Chair could use:

"A question to be divisible must comprehend points so distinct and entire that one of them being taken away the other may stand entire."

This has always been the ruling with regard to a division sought to be made by the demand of a single Member. Of course it does not exclude the power of amending by a majority of the Senate; and it is rather a striking fact that there have been two cases in the British Parliament, one about a hundred years ago and the other two hundred and thirty years ago, involving almost exactly the same question that is involved in the present instance. On the 2d of December, 1640, a question arose in the British House of Commons as to the case of two persons elected to represent the county of Worcester. A single member demanded that the resolution reported in regard to them should be divided so that each case should be voted upon separately; but it was ruled that it required the order of the House of Commons to divide the resolution, that the division could not be made by the demand of a single member. That case is thus referred to in a note to 2 Hatsell, page 86:

"On the 2d of December, 1640, on the question for making void the election of the knights of the shire for the county of Worcester, a question was made whether there should be two questions made of it or one. Resolved there should be two. This instance is referred to in Lex Parliamentaria, page 291, where it is said: 'If a question upon debate contain more parts than one, and the members seem to be for one part and not for the other, it may be moved that the same may be divided into two or more questions.'"

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[1] First session Forty-second Congress, Globe, pp. 494, 495.

[2] Schuyler Colfax, of Indiana, Vice-President.

One hundred and thirty years afterwards the question again came up, in regard to the election of persons from another shire in England; and Hatsell, in the second volume of his precedents, page 85, * * * states, as the ruling of that case, upon a demand made such as is now made by the Senator from Ohio in regard to the persons named in this resolution as follows:

"When a question is complicated, that is, consists of two or more propositions, it has been often said that it is the 'right' of any one member to have it divided, that he may give his opinion upon each proposition separately. This is a very favorite topic with Mr. Grenville, and often repeated by him, and at last insisted upon so much, in the question about the Middlesex election, on the 16th of February, 1770, that it was thought necessary to take the sense of the house upon it, which was done by a question, and carried in the negative on the 19th of February; so that this matter is now at rest. Upon this occasion everything was urged that could be said in favor of the doctrine as laid down by Mr. Grenville."

And the proceedings, which the Chair will not read, show that there was an election of more than one person from a county, as to which undoubtedly, although the Chair is not advised upon that, there was some difference as to their votes or as to the circumstances of the election. Mr. Grenville demanded that the cases should be separated, that all the points involved should not be put together in the resolution, but that the House of Commons should vote upon each point separately.

Hatsell, in a note, page 86, gives another precedent, as follows:

"See a debate upon this point in the House of Lords, on the 21st of February, 1734, in which Lord Bathurst insists upon the right of every lord to have the question separated, but is compelled by the house to move it as an amendment."[1]

It was thus decided in 1770, after a thorough debate, as it had been decided previously with regard to the election of the two members in the county of Worcester, and in the House of Lords in 1734, that it was not the right of a single member to have a resolution of this kind separated, but that it required an order of the house to have it separated. These cases are referred to in section 36 of Jefferson's Manual, which the Chair has already read; and Mr. Jefferson concludes with this summing up of the matter:

"A question to be divisible must comprehend points so distinct and entire that one of them being taken away the other may stand entire."

And that has been, so far as the Chair is informed, the ruling of all presiding officers in Congress throughout its entire history. Of course the end desired can be reached by amendment.

Thereupon Mr. Joshua Hill, of Georgia, moved to strike out the words "and Foster Blodgett," and by this means the Senate ultimately arrived at an expression of its opinions on the two cases.

6120. The latest ruling is that a resolution affecting two individuals may be divided, although such division may demand a reconstruction of the text.—On July 15, 1856,[2] the House was considering this resolution; reported from the committee that investigated the assault on Senator Charles Sumner:

Resolved, That this House hereby declares its disapprobation of the said acts of Henry A. Edmundson and Lawrence M. Keitt in regard to said assault.

Mr. Benjamin Stanton, of Ohio, called for a division of the question, quoting in support of his demand the precedent of the knights of Worcester, in 1640, referred to in the Manual (Jefferson's).

The Speaker[3] said:

The Chair decides that the resolution is not divisible, inasmuch as it does not contain two propositions, one of which will stand when the judgment of the House is passed upon the other.

Mr. Stanton having appealed, the decision of the Chair was sustained, yeas 162, nays 25.

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[1] Lords' Debates, vol. 4, p. 392.

[2] First session Thirty-fourth Congress, Journal, pp. 1206, 1207; Globe, p. 1639.

[3] Nathaniel P. Banks, jr., of Massachusetts, Speaker.

6121. On December 2, 1873,[1] the House was considering the following resolution:

Resolved, That J. H. Sypher, of the first district of Louisiana, L. A. Sheldon, of the second district, and P. B. S. Pinchback, Representative at large of the said State, having the prima facie evidence of the right to seats in this House, be admitted to take the oath, respectively.

Mr. James B. Beck, of Kentucky, asked for a division of the question.

The Speaker[2] ruled that such division might be demanded of right, saying:

The fate of one gentleman claiming a seat can not be linked with that of another in a resolution of this kind.

Thereupon the question was taken first on the first branch. That the oath be administered to J. Hale Sypher, and this was agreed to. Then the second branch, relating to L. A. Sheldon, was agreed to. The third branch, relating to P. B. S. Pinchback, was laid on the table.

6122. In deciding as to dividing a question, the Chair considers only the existence of substantive propositions, and not the merits of the questions presented.—On March 2, 1907,[3] the House was considering the bill (S. 6147) authorizing changes in certain street railway tracks within the District of Columbia, when Mr. Ollie M. James, of Kentucky, offered this amendment:

Add a new section as follows:

"That from and after the passage of this act the rate of fare that may be charged for the transportation of passengers over any and all street railway lines in the District of Columbia shall not exceed 3 cents, good for one continuous transportation of one passenger over the whole or any part of the line of said street railway company over which tickets are sold; and all conductors or other persons are hereby prohibited from demanding or receiving a fare or ticket from any passenger who is not provided with a seat.

"For a violation of any of the provisions of this section such company or other person violating the same shall be subject to a fine of $500 for each offense."

Mr. James B. Perkins, of New York, demanded a division of the proposition so as to vote separately on the portion relating to 3-cent fares.

Mr. William P. Hepburn, of Iowa, urged that the question was not divisible, since the penalty provision, which was intended to apply to both propositions, might, if a division were made, not so apply.

The Speaker[4] said:

It seems to the Chair, after examining the amendment with some care, that there are two propositions. * * * The Chair will state to the gentleman from Iowa that the consistency or wisdom of either or both propositions is not with the Chair. The only question is, Are there two propositions to be separated? and the Chair finds that there are. * * * After all, the continuity or the wisdom of the proposition is not to be passed upon by the Chair. The only question is whether there are two propositions, so that if one is taken away there would remain a substantive proposition, and the Chair finds there are two.

Thereupon the Speaker directed the Clerk to report the first proposition, as follows:

That from and after the passage of this act the rate of fare that may be charged for the transportation of passengers over any and all street railway lines in the District of Columbia shall not exceed 3 cents, good for one continuous transportation of one passenger over the whole or any part of the line of said street railway company over which tickets are sold.

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[1] First session Forty-third Congress, Journal, pp. 36, 38, 39; Record, pp. 27, 28, 34.

[2] James G. Blaine, of Maine, Speaker.

[3] Second session Fifty-ninth Congress, Record, p. 4509.

[4] Joseph G. Cannon, of Illinois, Speaker.

The motion to insert this was agreed to by the House—yeas 141, nays 102.

Then the question was taken on inserting the remainder of the proposed section, and it was disagreed to.

6123. A rule provides that the motion to strike out and insert shall not be divided.—Section 7 of the Rule XVI [1] provides:

A motion to strike out and insert is indivisible. * * *

6124. On a motion to strike out a resolution and insert a division of the question so as to vote separately on each substantive proposition of the matter to be inserted was decided not to be in order (Speaker overruled).—On June 28, 1850,[2] the House had under consideration a resolution reported from the Committee on Elections, as follows:

Resolved, That William Thompson is entitled to the seat which he now holds as the Representative from the First Congressional district of Iowa.

Mr. John Van Dyke, of New Jersey, moved as an amendment to this, to strike out all after the word "Resolved" an insert the following:

1. *Resolved,* That the seven votes cast at Pleasant Grove with the middle letter of the contestant's name omitted be allowed and counted for him.

And so on through six similar resolutions relating to the votes at different places, and concluding with the following:

8. *Resolved,* That Daniel F. Miller is entitled to a seat in this House as the Representative from the First Congressional district of Iowa.

Mr. William S. Ashe, of North Carolina, called for a division of the amendment, and the Speaker announced that the question would be first taken on the first resolution.

Mr. Robert C. Winthrop, of Massachusetts, made the point of order that upon a motion to strike out a resolution and insert several resolutions connected together the question was not divisible.

The Speaker [3] stated that his attention having been called to the point of order made by the gentleman from Massachusetts, he had examined it and referred to a precedent in the Twenty-ninth Congress, and expressed the opinion that the motion to strike out and insert was divisible to the extent of inserting any substantive part of the resolutions. It would not be in order to vote first on the motion to strike out and then on the motion to insert.[4]

Mr. Samuel W. Inge, of Alabama, appealed, and the decision was reversed—92 nays to 75 yeas.

6125. On June 2, 1858,[5] the House was considering a resolution in five parts relating to the sale of Fort Snelling military reservation.

Mr. Charles J. Faulkner moved to amend by striking out all after the word "Resolved" and inserting substitute resolutions, two in number, the first beginning with the word "that" and the second beginning with the word "Resolved."

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[1] See section 5767 of this volume for full form and history of this rule.

[2] First session Thirty-first Congress, Globe, p. 1310.

[3] Howell Cobb, of Georgia, Speaker.

[4] The motion to strike out and insert is not divisible because of a rule. (see sec. 6123).

[5] First session Thirty-fifth Congress, Globe, pp. 2646, 2655; Journal, p. 992.

Thereupon Mr. Horace F. Clark, of New York, moved to amend the substitute proposed by Mr. Faulkner by striking out all after the word "that" and inserting a series of four resolutions, all but the first beginning with the word "Resolved."

Mr. John Letcher, of Virginia, asked for a separate vote on the several branches of Mr. Clark's amendment.

The Speaker [1] said:

> The Chair doubts whether a division can be had of such an amendment. It must be taken as an entirety. If not, the effect of it practically would be to allow a gentleman, instead of offering one amendment, to offer two or three, and instead of there being an amendment, an amendment to an amendment pending, it might result in there being five or ten amendments pending.

By unanimous consent, however, the division was allowed.

After the amendments proposed by Messrs. Faulkner and Lewis had been disposed of, and the question recurred on agreeing to the original proposition, a division of that was allowed on the demand of a Member.[2]

6126. On February 27, 1845,[3] the House was considering the bill (H.R. 541) for improving the navigation of certain rivers, and a motion was pending to strike out all of the bill after the word "that" next the enacting clause, and insert a new text, i.e., an amendment in the nature of a substitute. A motion was made to divide the proposed substitute so as to take a vote first on a portion relating to certain canals. The point of order was made that on a motion to strike out and insert it was not in order to divide the amendment. But the Speaker pro tempore [4] ruled the demand in order. On appeal this decision was sustained. The House then voted on the portion relating to the canals and rejected it. The remainder of the amendment was then agreed to.[5]

6127. Substitute resolutions offered as an amendment are not divisible; but when agreed to a division of the original as amended may be demanded.—On February 10, 1904,[6] the House was considering the Pennsylvania contested election case of Connell *v.* Howell, and the question was on agreeing to a motion submitted by Mr. Frank A. McLain, of Mississippi, that all of the resolutions proposed by the elections committee be stricken out after the word "*Resolved*," and that there be inserted two resolutions, one declaring contestant not elected and the other declaring sitting Member elected and entitled to the seat.

Mr. John S. Williams, of Mississippi, rising to a parliamentary inquiry, asked if the amendment might be divided.

The Speaker [7] replied that the amendment must be voted on as a whole.

The amendment being rejected, the question recurred on the resolutions of the committee, and the Speaker permitted a division so that a separate vote might be taken on each.

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[1] James L. Orr, of South Carolina, Speaker.

[2] Globe, p. 2657.

[3] Second session Twenty-eighth Congress, Journal, p. 508; Globe, p. 365.

[4] George W. Hopkins, of Virginia, Speaker pro tempore.

[5] Where it is proposed to amend by striking out from the text and inserting, and also by adding to the end of the text, a division of the amendment, if indeed it really be one amendment, has been allowed. See instance February 22, 1845. (Second session Twenty-eighth Congress, Journal, p. 436.)

[6] Second session Fifty-eighth Congress, Record, pp. 1865, 1866.

[7] Joseph G. Cannon, of Illinois, Speaker.

6128. On February 26, 1903,[1] the House was considering the following resolutions:

Resolved, That James J. Butler was not elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is not entitled to a seat therein.

Resolved, That George C. R. Wagoner was elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is entitled to a seat therein.

And the pending question was on the following amendment:

Strike out all after the word "*Resolved*" and insert:

"That George C. Wagoner was not elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is not entitled to a seat therein.

"Resolved, That James J. Butler was elected a Representative in the Fifty-seventh Congress from the Twelfth Congressional district of Missouri, and is entitled to a seat therein."

Mr. Oscar W. Underwood, of Alabama, made the point of order that this was a substitute for the original resolutions and not an amendment.

The Speaker pro tempore[2] said:

It has no standing in a parliamentary way except as an amendment.

Mr. James D. Richardson, of Tennessee, demanded a division of the amendment.

Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that the question was not divisible.

The Speaker pro tempore said:

The Chair will say to the gentleman from Tennessee that under the rules of the House, as the gentleman from Tennessee is aware, a motion to strike out and insert is not divisible. * * * The gentleman will be entitled to a division on the main proposition, but on the motion to strike out a resolution and insert it is not divisible.[3]

6129. When it is proposed to amend by inserting or adding, the matter is divisible if it contain more than one substantive proposition.—On January 30, 1847[4] the House was considering a joint resolution thanking General Taylor and the officers and soldiers of his command for their conduct in storming the city of Monterey.

Mr. James J. Faran, of Ohio, moved to amend by inserting the following:

Engaged, as it was and still is, in a war commended and forced upon us by Mexico, and continued by us in defense of the honor and in vindication of the just rights of the United States, assailed as both have been by repeated and flagrant acts, on the part of Mexico, of insult, outrages, and, finally, of invasion of one of the States of this Union: *Provided,* That nothing herein contained shall be construed into an approbation of the terms of the capitulation of Monterey.

The previous question was moved and ordered on this amendment, when Mr. Richard Brodhead, of Pennsylvania, asked for a division of the question so as to vote separately on the proviso.

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[1] Second session Fifty-seventh Congress, Record, p. 2726; Journal, p. 291.

[2] John Dalzell, of Pennsylvania, Speaker pro tempore.

[3] In one instance, however, a division was permitted under these circumstances. On April 22, 1892, during consideration of the election case of Noyes *v. Rockwell, the minority of the Committee on Elections moved to substitute two resolutions for the two resolutions proposed by the majority. A division of the proposed amendment was demanded and granted. (First session Fifty-second Congress, Record, p. 2538.)*

[4] Second session Twenty-ninth Congress, Journal, pp. 275, 276; Globe, pp. 295, 296.

The Speaker [1] decided that the amendment was not divisible.

An appeal being taken, the decision of the Chair was sustained.

6130. On September 5, 1850,[2] while the House was considering the bill of the Senate (No. 307) proposing to the State of Texas the establishment of her northern and eastern boundaries, Mr. Robert Toombs, of Georgia, offered as an amendment to a pending amendment a proposition which, being put to vote, was divided, on the demand of Mr. Preston King, of New York.

The first part of the proposition, which was decided in the affirmative, was as follows:

And no citizen of the United States shall be deprived of his life, liberty, or property in said Territory, except by the judgment of his peers and the law of the land.

The question was then stated on agreeing to the second part, as follows:

And that the Constitution of the United States, and such statutes thereof as may be locally applicable, and the common law, as it existed in the British colonies of America until the 4th day of July, 1776, shall be the exclusive laws of said Territory, upon the subject of African slavery, until altered by the proper authority.

It was decided in the negative, yeas 65, nays 132.

6131. On July 6, 1850,[3] the House resumed consideration of the report of the select committee appointed to investigate the conduct and relation of the Hon. George W. Crawford to the claim of the representatives of George Galphin.

For the resolution reported by the committee Mr. Robert C. Schenck, of Ohio, had offered the following substitute:

That there is no evidence submitted by the committee to whom was referred the letter of George W. Crawford, asking "an investigation" into his conduct in reference to the claim of the representatives of George Galpin, which impugns his personal or official conduct in relation to the settlement of the claim by the proper officers of the Government.

Provided, however, That this House is not to be understood as approving his relation to that claim, in continuing to be interested in the prosecution of it when it was to be examined, adjusted, and paid by one of the Departments of the Government, he himself being at the same time at the head of another of those Departments; but the House considers that such connection and interest of a member of the Cabinet with a claim pending and prosecuted before another Department would be dangerous as a precedent, and ought not to be sanctioned.

To this substitute Mr. Jacob Thompson, of Mississippi, moved to amend by adding at the end thereof the following:

And consequently that the House also totally dissents from the correctness of the opinion expressed by the President of the United States to the said Secretary of War, "that his (the said Crawford) being at the head of the War Department and the agent of the claimants did not take from him any rights he may have had as such agent, or would have justified him in having the examination and decision of the claim by the Secretary of the Treasury suspended."

Resolved further, That this House decidedly disapproves of and dissents from the opinion given by the Attorney-General in favor of an allowance of interest on said claim, and from the action of the Secretary of the Treasury in payment of the same.

The question being on the amendment of Mr. Thompson to the substitute of Mr. Schenck, Mr. Humphrey Marshall, of Kentucky, asked a division of the question.

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[1] John W. Davis, of Indiana, Speaker.

[2] First session Thirty-first Congress, Journal, pp. 1398, 1399; Globe, p. 1757.

[3] First session Thirty-first Congress, Journal, pp. 1079, 1083, 1091; Globe, p. 1346.

Mr. William A. Richardson, of Illinois, made the point of order that it was not divisible, an amendment to an amendment not being divisible.

The Speaker[1] decided that, inasmuch as the amendment to the substitute contained two substantive, distinct propositions, it was clearly divisible, and ruled accordingly.

Mr. Richardson having appealed, the decision of the Chair was sustained.

6132. On April 24, 1902[2] while the bill (H. R. 9206) relating to the sale and manufacture of oleomargarine was under consideration in Committee of the Whole House on the state of the Union, Mr. Charles F. Scott, of Kansas, moved to insert in the bill the following:

Every person who sells adulterated butter in less quantities than ten pounds at one time shall be regarded as a retail dealer in adulterated butter.

Wholesale dealers in process or renovated butter shall pay a tax of fifty dollars per annum and retail dealers in process or renovated butter shall pay a tax of six dollars per annum. Every person who sells or offers for sale renovated or process butter in the original manufacturer's package shall be deemed a wholesale dealer in process or renovated butter, but any manufacturer of renovated or process butter who has given the required bond and paid the required tax and who sells only renovated or process butter of his own production at his place of manufacture in the original packages to which the tax-paid stamps are affixed shall not be required to pay the special tax of the wholesale dealer in renovated or process butter on account of such sale. Every person who sells renovated or process butter in less quantities than 10 pounds at one time shall be regarded as a retail dealer in process or renovated butter.

Mr. James A. Tawney, of Minnesota, asked for a division of the amendment, so as to vote first on the motion to insert the following portion:

Every person who sells adulterated butter in less quantities than ten pounds at one time shall be regarded as a retail dealer in adulterated butter.

The Chairman[3] said:

The Chair will state that this, not being a motion to strike out and insert, but a motion to amend by adding new matter, it is properly divisible provided it contains more than one substantive proposition. The Chair is of the opinion that it does contain at least two, and therefore sustains the demand of the gentleman from Minnesota, and will put the question upon the first proposition.

The question was then taken on the motion to insert the above portion of the amendment, and it was agreed to.

Then the question was taken on the motion to insert the remaining portion, and it was disagreed to.

6133. On March 17, 1902[4] while the bill (S. 1348) to provide for the ocean mail service, etc., was under consideration in the Senate a motion was made to insert the following:

No vessel shall be entitled to the full compensation under this title unless she shall have cleared from a port of the United States with cargo to the amount of 50 per cent of her capacity for carrying commercial cargo; and any shortage in the amount of cargo required and defined as aforesaid shall diminish the amount of the compensation in this paragraph provided for in the proportion that such shortage bears to the total cargo or its equivalent so required. All vessels receiving compensation under this section shall be at least of class Al or its equivalent, as defined in paragraph C of section 7 of this act, during the whole period for which payment is authorized under the provisions of this title.

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[1] Howell Cobb, of Georgia, Speaker.

[2] First session Fifty-seventh Congress, Record, pp. 4629–4634.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

[4] First session Fifty-seventh Congress, Record, p. 2902.

A division being demanded, the President pro tempore [1] ruled that it might be divided so as to vote on the first sentence and then on the second, each being a substantive proposition.

6134. A division of the question is not in order on a motion to commit with instructions or on the different branches of the instructions.—On April 27, 1822,[2] the House had under consideration a bill changing the compensation of Members of Congress, etc. Various motions to recommit with instructions had been made, when Mr. Walter Patterson, of New York, renewed the motion to recommit, with the instructions to make the pay of Congressmen $4 a day with $4 for every 20 miles of travel.

And the question being stated thereon, Mr. John Long, of North Carolina, moved to amend the instructions by striking out "four dollars" and in lieu thereof inserting "seven dollars."

And the question being stated thereon, Mr. Burwell Bassett, of Virginia, moved to amend the motion to recommit, by expunging all the instructions.

The Speaker [3] declared this motion not to be in order, it being in effect a call for a division of a question declared indivisible by the rules of the House.[4]

From this decision Mr. Bassett appealed to the House. The Chair was sustained.

6135. On September 5, 1850,[5] the bill of the Senate (No. 307) entitled "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and of all her claims upon the United States," was under consideration, when Mr. John Wentworth, of Illinois, moved that the bill and pending amendments be committed to the Committee of the Whole House on the state of the Union, with the following instructions:

> With instructions to amend the amendment so as to exclude slavery from all the territory acquired from Mexico by the treaty of Guadalupe-Hidalgo lying eastward of California. Also to strike out the words, in the first section of the proposed amendment to the bill, "thence following the main channel of said river to the parallel of the thirty-second degree of north latitude; thence east with the said degree to its intersection with the one hundred and third degree of longitude west of Greenwich:" and insert the words "thence down the main channel of the river Rio Grande to the point where said river crosses the one hundred and second degree of longitude west of Greenwich." Also to strike out from the words "*Provided, also,"* in the eighth line of the fifth section of the bill, to the words "United States," in the nineteenth line of the same.

Mr. Samuel W. Inge, of Alabama, demanded a division of the question on the different branches of the instructions.

The Speaker [6] decided that the question was indivisible, on the ground that two substantive and distinct propositions could not be made out of them, either of which, the other failing, could stand of itself; and this was the test by which the division of a question must be determined.

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[1] William P. Frye, of Maine, President pro tempore.

[2] First session Seventeenth Congress, Journal, p. 507.

[3] Philip P. Barbour, of Virginia, Speaker,

[4] This was the first ruling after an important change in the rule. See section 6107 of this chapter.

[5] First session Thirty-first Congress, Journal, pp. 1395–1397; Globe, p. 1756.

[6] Howell Cobb, of Georgia, Speaker.

From this decision of the Chair Mr. Inge appealed. And the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative, yeas 101, nays 86.

Mr. Thomas L. Clingman, of North Carolina, demanded a division of the question upon the motion of Mr. Wentworth, so that a separate vote might be taken upon the commitment and the instructions.

The Speaker decided that the question was indivisible, on the ground that if the motion to commit failed, the instructions must necessarily fall; and, consequently, that the motion did not present such a case as, under the rule, would admit of a division of the question.

The Speaker said:

> The rule is that a motion to be divided must contain two or more separate and distinct propositions. If the motion to commit and the motion to instruct the committee be divided, and the question be taken first on the motion to commit, and the House refuse to commit, the motion to instruct does not constitute a substantive proposition which can stand by itself. If, on the other hand, the vote be taken first on the motion to instruct, and that is adopted, the question would recur upon the motion to commit; and if the House should refuse to commit, what becomes of the instructions? They must necessarily fall. This shows that the commitment and instructions are not two distinct and substantive propositions.
>
> If the instructions had been offered separately as an amendment, the House would thereby have been brought to a vote separately upon them, and, if they were agreed to, the question would recur upon committing with the instructions. The Chair thinks the point a very clear and distinct one. He intimated the opinion, however, to the gentleman from Illinois, Mr. Wentworth, that a separate vote might be taken upon each branch of the instructions after the first. But the House, upon reflection, will perceive that this ruling would involve the House in the same difficulty. Suppose the vote was taken first upon the motion to commit with the first instructions, and the House refused to commit with those instructions, the remaining instructions would fall, as a matter of course; or suppose the House voted first upon the several branches of the instructions, except the first, and they were agreed to, and then refused to commit the bill with the first instructions, what would become of the subsequent instructions which had been agreed to? Hence the Chair must rule that the only vote to be taken is upon the motion to commit with instructions, and that the motion is indivisible.

Mr. Clingman having appealed, the decision of the Chair was sustained.

6136. On April 19, 1852,[1] Mr. James L. Orr, of South Carolina, moved to recommit a report of the Committee on Printing with instructions to report on the whole subject and to recommend for the adoption of Congress such a system for the execution of the public printing as they might deem most expedient, and that they especially take into consideration the plan for a printing bureau for the execution of the work under the supervision of a Government officer.

Mr. Charles E. Stuart, of Michigan, demanded a division of the question, so that a separate vote might be had; first, on the recommitment, and second, on the instructions.

The Speaker[2] decided that the motion to recommit with instructions was indivisible, on the ground that it did not contain propositions so distinct that one failing, the other could stand; if the House should refuse to commit there would be nothing left with which to connect the instructions.

On appeal the Chair was sustained.

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[1] First session Thirty-second Congress, Journal, p. 611; Globe, p. 1124.

[2] Linn Boyd, of Kentucky, Speaker.

Mr. Alexander H. Stephens, of Georgia, then called for a division of the question so that separate votes might be had on the two branches of the instructions, the latter branch being as follows, viz, "that they especially take into consideration the plan for a printing bureau for the execution of the work under the supervision of a Government officer."

The Speaker decided that the question was indivisible for the same reason that he had just decided the proposition of Mr. Stuart to be out of order. If, as the House had just sustained him in deciding, the question of recommitment with instructions could not be divided, the instructions themselves could not be divided, as a division would separate the commitment from a part of the instructions, which could no more stand alone than the entire instructions.

On an appeal by Mr. Stephens, the Chair was sustained.

6137. On February 26, 1904,[1] pending the passage of the naval appropriation bill, a motion was made to recommit with instructions to incorporate in the bill a series of propositions.

Mr. John S. Williams, of Mississippi, called for a division of the instructions.

The Speaker[2] said:

The Chair is furnished with the precedent or precedents that a motion to recommit is not divisible in its different branches of instruction.

6138. A division of the question may not be demanded on a motion to lay a series of resolutions on the table. (Speaker overruled.)-On December 20, 1847—,[3] Mr. John Pettit, of Indiana, offered the following resolutions:

Resolved, That if, in the judgment of Congress, it be necessary to improve the navigation of a river, to expedite and render secure the movements of our Army, and save from delay and loss our arms and munitions of war, then Congress has the power to improve such river.

Resolved, That if it be necessary for the preservation of the lives of our seamen, repairs, safety, or maintenance of our vessels of war, to improve a harbor or inlet, either on our Atlantic or lake coast, Congress has the power to make such appropriations.

Mr. Alexander D. Sims, of South Carolina, moved to lay the resolutions on the table.

Mr. Charles J. Ingersoll, of Pennsylvania, called for a division of the question on the resolutions.

The Speaker[4] decided that the resolutions were distinct and separate propositions, and that, under the express rule of the House, any Member might call for a division of them. He thought that it was not too late for such a call, and that, the resolutions being divided, the motion to lie on the table would apply to them separately.

Mr. Sims appealed from the decision, there seeming to be a question as to whether the motion to lay on the table would permit of such a division. And the question being taken, the decision of the Chair was reversed, and the question was decided not to be divisible.

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[1] Second session Fifty-eighth Congress, Record, p. 2449.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Thirtieth Congress, Journal, p. 129; Globe, p. 58.

[4] Robert C. Winthrop, of Massachusetts, Speaker.

6139. A motion to lay a resolution and pending amendment on the table may not be divided.—On May 16, 1834,[1] the House was considering the following resolution, offered by Mr. Samuel W. Mardis, of Alabama:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of reporting a bill requiring the Secretary of the Treasury to deposit the public moneys of the United States in the State banks; and also to the expediency of defining, by law, all contracts hereafter to be made with the Secretary for the safe-keeping, management, and disbursement of the same.

To this Mr. Thomas Corwin, of Ohio, offered the following amendment in the nature of a substitute:

That the reasons of the Secretary of the Treasury for the removal of the public deposits from the Bank of the United States are insufficient; and that it is inexpedient to enact a law requiring the Secretary of the Treasury to deposit the public money in the State banks.

A motion having been made to lay the resolution and amendment on the table, Mr. Thomas M. T. McKennan, of Pennsylvania, demanded that the question be divided, so as to be taken first on laying the resolution on the table and then on laying the amendment on the table.

The Speaker[2] pronounced such a motion to be out of order.

6140. On February 28, 1879[3] the House was considering the bill (H. R. 805) providing for the repeal of the resumption act. It had passed the Senate with amendments, and the House Committee on Banking and Currency had recommended concurrence in the Senate amendments with certain amendments.

Mr. James A. Garfield, of Ohio, moved to lay the bill and pending amendments on the table.

Mr. John Hanna, of Indiana, rising to a parliamentary inquiry, asked if a division of the question might be had, so as to vote separately on laying on the table the amendments reported by the Committee on Banking and Currency.

The Speaker[4] said:

The motion to lay on the table is a summary motion, the object being to kill the bill, and it is not divisible.

6141. A division of the question may not be demanded on a vote on suspension of the rules.—On May 7, 1906,[1] Mr. William P. Hepburn, of Iowa, moved that the rules be suspended and that the following order be agreed to:

Ordered, That the privilege granted to bills reported from committees having the right to report at any time, be, and is hereby, granted to the following bills:

S. 88: "For preventing the adulteration or misbranding of foods or drugs, and for regulating traffic therein, and for other purposes."

H. R. 18673: "To regulate the immigration of aliens into the United States."

Ordered further, That the bill (H. R. 17984) to provide a code of penal laws for the United States, be, and hereby is, made a special continuing order for consideration at evening sessions of the House, whenever the House shall by vote take a recess from the usual hour of adjournment until 8 p. m., the said evening sessions not to continue after 10.30 p. m.

A second having been ordered and debate having been concluded, the question was about to be put when Mr. John S. Williams, of Mississippi, demanded a division of the question.

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[1] First Session Twenty-third Congress, Debates, p. 4136.

[2] Andrew Stevenson, of Virginia, Speaker.

[3] Third session Forty-fifth Congress, p. 1794.

[4] Samuel J. Randall, of Pennsylvania.

[5] First session Fifty-ninth Congress, Record, p. 6466.

The Speaker[1] held that under the uniform rulings of the past a division of the question might not be demanded on a vote on suspension of the rules.

6142. On March 22, 1869,[1] the House was considering a motion to suspend the rules and agree to a resolution relating to the disposal of contested election cases.

Mr. John F. Farnsworth, of Illinois, rising to a parliamentary inquiry, asked if the resolution could not be divided so as to take a separate vote on a certain part of it.

The Speaker[3] said:

The motion to suspend the rules and adopt the resolution precludes the call for a division.

6143. On December 14, 1868,[4] Mr. William Lawrence, of Ohio, moved to suspend the rules and agree to a resolution which he presented in relation to the investigation of certain alleged election frauds in New York.

Mr. William E. Robinson, of New York, asked if it would be in order to demand a division of the resolution.

The Speaker[5] held:

The motion to suspend the rules suspends that rule with all others. Under the rule the gentleman can ask for a division of the resolution, but if two-thirds vote to suspend the rules that rule is suspended with all the others.

6144. In voting on the engrossment and third reading and passage of a bill, a separate vote on the various propositions of the bill may not be demanded.—On August 28, 1893,[6] the Speaker announced the question to be on the engrossment and third reading of the bill under consideration.

Mr. Joseph W. Bailey, of Texas, thereupon demanded that there be a division of the question on the engrossment and third reading of the bill and that the question of engrossment and third reading of each of the two propositions contained in the bill be taken separately.

Mr. W. Bourke Cockran, of New York, made the point of order that the question was not divisible and that such vote could not be taken separately.

The Speaker sustained the point of order.

The bill was thereupon ordered to be engrossed and was read the third time.

The question being put, Shall the bill pass?

Mr. Bailey demanded that the vote be taken separately on each of the two propositions contained in the bill.

The Speaker[7] held that the question on the passage of the bill could not be divided and that the rule and practice of the House in respect to division of questions did not apply to the question on the passage of a bill.[8]

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Forty-first Congress, Globe, p. 197.

[3] James G. Blaine, of Maine, Speaker.

[4] Third session Fortieth Congress, Globe, p. 73.

[5] Schuyler Colfax, of Indiana, Speaker.

[6] First session Fifty-third Congress, Journal, pp. 21, 22.

[7] Charles F. Crisp, of Georgia, Speaker.

[8] On February 25, 1846, the House adopted a rule providing that on the engrossment of any bill appropriating money for internal improvements it should be in the power of any Member to call for a division so as to take the vote separately on each item or any item of appropriation. On March 19 this rule was invoked when the river and harbor bill was passed to be engrossed. (First session Twenty-ninth Congress, Journal, pp. 454, 543; Globe, p. 427.) This rule long since ceased to exist.

6145. A division of the question may not be demanded on the passage of a joint resolution.—On April 16, 1856,[1] the House had ordered to be engrossed and read a third time the joint resolution (H. Res. 11) for the purchase of Doctor Kane's forthcoming work on Arctic explorations, etc. This resolution contained two branches, one relating to the book and the other relating to the presentation of certain medals to Doctor Kane and his officers and men. There was also with the second branch a distinct resolving clause.

The previous question on the passage of the resolution was ordered.

Thereupon a division of the question was called for.

The Speaker[2] decided that the question was indivisible, the resolution having been engrossed and read a third time.

Mr. Thomas L. Clingman, of North Carolina, having appealed, the appeal was laid on the table.

6146. On February 27, 1861,[3] the House was considering a joint resolution (H. Res. 64) reported from the select committee of thirty-three appointed to consider so much of the President's message as related to the perilous state of the Union. This resolution[4] was in reality a series of resolutions expressing the opinion of Congress in regard to the status of slavery and making certain recommendations to the several States in regard to legislation by their legislatures for the purpose of allaying the feelings of the two sections of the country.

The joint resolution had been engrossed and read a third time, and the question was on the passage, when Mr. Jacob M. Kunkel, of Maryland, asked a division of the question.

The Speaker[5] pro tempore decided that on the passage of a joint resolution, unlike the case of simple resolutions of the House, a division of the question was not in order .

Mr. Kunkel having appealed, the appeal was laid on the table.

6147. On the passage of a bill with a preamble, a division of the question may not be demanded.—On January 25, 1837,[6] the House was considering the bill "to provide for the admission of the State of Michigan into the Union on an equal footing with the original States."

The pending question was a demand for the previous question, made on a preceding day.

Mr. Charles F. Mercer, of Virginia, rising to a parliamentary inquiry, asked whether, if the demand for the previous question should be seconded,[7] the question could not be separately taken on the preamble and bill.

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[1] First session Thirty-fourth Congress, Journal, p. 837; Globe, p. 936.

[2] Nathaniel P. Banks, jr., of Massachusetts, Speaker.

[3] Second session Thirty-sixth Congress, Journal, p. 415; Globe, p. 1262.

[4] This resolution did not pass the Senate, so there was no opportunity for the President to sign it. As it merely expressed the opinion of Congress there might be a question as to whether he would have been required to sign it.

[5] Henry L. Dawes, of Massachusetts, Speaker pro tempore.

[6] Second session Twenty-fourth Congress, Debates, p. 1479.

[7] The second is no longer required.

The Speaker [1] replied that there was no precedent for such a division.[2]

6148. On the passage of a joint resolution with a preamble, a separate vote may not be demanded on the preamble.—On July 20, 1866,[3] the House was considering the joint resolution declaring Tennessee again entitled to Senators and Representatives in Congress. The resolution had been ordered to be engrossed, and the pending question was on ordering the preamble to be engrossed.

Mr. Henry J. Raymond, of New York, rising to a parliamentary inquiry, asked whether or not, after the preamble should have been ordered to be engrossed and read a third time, there could be separate votes on the resolution and preamble.

The Speaker [4] said:

> The only way in which a separate vote can be had on the preamble is by calling for it now. * * * There is no precedent known to any gentleman here which sanctions the idea that, after a bill has been engrossed and the question recurs upon its passage, a part of the bill can be passed and a part rejected. According to uniform parliamentary usage that is impossible.[5]

6149. The previous question being ordered on a series of resolutions, a division was permitted so as to vote separately on each resolution.—On April 4, 1834,[6] the House was considering a series of resolutions reported from the Committee of Ways and Means, relating to the removal of the public deposits from the United States Bank.

The House ordered the previous question on the resolutions, yeas 114, nays 106.

Thereupon a division of the question was demanded by Mr. Richard H. Wilde, of Georgia.

Mr. John Quincy Adams, of Massachusetts, rising to a parliamentary inquiry, asked whether or not the previous question applied to all the resolutions, or only to the first.

The Speaker [7] held that, as the House had decided that the main question should be put, the main question itself was susceptible to division so as to get a separate vote on each resolution.

Thereupon the House voted on each resolution separately.

6150. On May 15, 1858,[8] Mr. Speaker Orr held that a demand for a division of the main question was not in order after the ordering of the previous question.

6151. On the question of agreeing or disagreeing to a Senate amendment it is not in order according to the weight of authority to demand a

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[1] James K. Polk, of Tennessee, Speaker.

[2] Of course the question on a preamble may always be taken separately until after the engrossment, since it is impossible to determine what the preamble should be until the period of amendment is passed.

[3] First session Thirty-ninth Congress, Globe, pp. 3975, 3976.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] On April 5, 1860, occurred an instance, during the consideration of the bill (H. R. 7) to punish and prevent the practice of polygamy in the Territories of the United States, etc., where, after the bill had been ordered to be engrossed and read a third time, the preamble was considered and disagreed to. (First session Thirty-sixth Congress, Journal, p. 662.)

[6] First session Twenty-third Congress, Journal, pp. 482, 483; Debates, p. 3473.

[7] Andrew Stevenson, of Virginia, Speaker.

[8] First session, Thirty-fifth Congress, Globe, p. 2243.

division so as to vote separately on different portions of the amendment.— On March 3, 1853,[1] the naval appropriation bill had returned from the Senate with amendments, and had been considered in Committee of the Whole House on the state of the Union. That committee had risen, recommending agreement to certain amendments and disagreement to others.

Mr. Alexander H. Stephens, of Georgia, demanded a division of the forty-second amendment, relating to a plan for reorganizing the Navy, so that separate votes might be taken on the different sections.

The Speaker[2] decided that the question was indivisible and that the vote must be taken upon the entire amendment.

On an appeal the decision of the Chair was sustained.

6152. On April 28, 1826,[3] the House was considering a Senate amendment to the bill further to amend the judicial system of the United States.

Mr. John Forsyth, of Georgia, called attention to the fact that the amendment contained two distinct matters, and he wished to obtain two distinct votes of the House on these two parts.

The Speaker[4] replied that the Senate had returned the bill with but one amendment, and that, by the rules of the House, it was not divisible. It might, however, be amended by striking out part of it, or otherwise, before the question was put on agreeing or disagreeing to it.

Thereupon two amendments were offered and agreed to, one striking out a portion and the other inserting certain words.

These amendments being adopted, Mr. Daniel Webster moved that the House disagree to the amendment of the Senate, and this motion prevailed—yeas 110, nays 160.

6153. On August 4, 1789,[5] the House considered the amendments proposed by the Senate to a bill entitled "An act to establish the Treasury Department," and agreed to this resolution:

Resolved, That this House do agree to so much of the eighth amendment as proposes to strike out the following words in the seventh clause of the bill, to wit: "The assistant to the Secretary of the Treasury shall be appointed by the President and "and do disagree to such other part of the said amendment as proposes to strike out the residue of the said clause.

6154. On February 25, 1861,[6] occurs an instance wherein a division of a Senate amendment was allowed, and the House agreed to the first portion and disagreed to the second portion. But when it came to notifying the Senate of this action, the matter was treated as an amendment to the Senate amendment, which it in fact was, although it had been arrived at by a separate vote instead of by a motion to amend.

6155. On December 11, 1877,[7] Mr. Speaker Randall permitted the division of a Senate amendment to a House bill, the vote being taken first on agreeing to

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[1] Second session Thirty-second Congress, Journal, p. 401; Globe, p. 1149.

[2] Linn Boyd, of Kentucky, Speaker.

[3] First session Nineteenth Congress, Journal, p. 485; Debates, p. 2579.

[4] John W. Taylor, of New York, Speaker.

[5] First session First Congress, Journal, p. 90 (old ed.), 71 (Gales & Seaton ed.); Annals, p. 702.

[6] Second session Thirty-sixth Congress, Journal, pp. 372, 384.

[7] Second session Forty-fifth Congress, Journal, p. 94; Record, pp. 129, 130.

the first portion and then on agreeing to the second portion. Both portions were disagreed to.

6156. On the Calendar day of March 3, 1901,[1] but the legislative day of March 1, the House was considering Senate amendments to the sundry civil appropriation bill, and the Clerk had reached the amendment numbered 151. This was a single amendment, occupying thirty pages of the bill, and making appropriations and provisions for three expositions, one at St. Louis, another at Charleston, and a third at Buffalo.

Mr. De Alva S. Alexander, of New York, moved that the House recede and concur in this amendment of the Senate.

Mr. H. Henry Powers, of Vermont, rising to a parliamentary inquiry, asked if the question might be divided, so as to vote separately on the three different propositions:

The Speaker[2] said:

The Chair regrets to say that he does not know of any way in which that can be done. This is one amendment of the Senate.

6157. A decision of the Speaker involving two distinct questions, he permitted the question on appeal to be divided.—On March 19, 1802,[3] the Speaker having, in one decision, decided two distinct questions of order, although relating to one subject and raised on one question, on appeal a demand was made for a division of the question.

The Speaker[4] allowed the division, putting the question on one part of his decision and then on the other.

6158. A single proposition with modifications may not be divided for the vote—On December 2, 1901,[5] the question was on agreeing to the following resolutions:

Resolved, That the rules of the House of Representatives of the Fifty-sixth Congress be adopted as the rules of the House of Representatives of the Fifty-seventh Congress, with the following modifications:

1. That the special orders adopted March 8 and March 14, 1900, providing a method for the consideration of pension bills, claim bills, and other private bills shall be continued during the Fifty-seventh Congress.

2. That the place of the Select Committee on the Twelfth Census in the rules of the Fifty-sixth Oongress shall be filled in the rules of the Fifty-seventh Congress by a standing committee on the census, to consist of 13 members, and have jurisdiction of all proposed legislation concerning the census and the apportionment of Representatives.

Resolved further, That there shall be appointed to serve during the Fifty-seventh Congress a select committee on industrial arts and expositions, to consist of 9 members, which shall have jurisdiction of all matters (excepting those relating to the revenue and appropriations) referring to the centennial of the Louisiana purchase and to proposed expositions.

Mr. Claude A. Swanson, of Virginia, demanded a division of the question.

Mr. John Dalzell, of Pennsylvania, urged that the first resolution with its modifications was not divisible.

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[1] Second session Fifty-sixth Congress, Record, p. 3575.

[2] David B. Henderson, of lowa, Speaker.

[3] First session Seventh Congress, Journal, p. 148 (Gales & Seaton ed.).

[4] Nathaniel Macon, of North Carolina, Speaker.

[5] First session Fifty-seventh Congress, Journal, p. 8; Record, p. 48.

The Speaker [1] said:

The first branch of the resolution, as just recited by the gentleman from Pennsylvania, is not capable of division; the Chair so holds; but the Chair is of opinion that each resolve is a separate proposition, and a separate vote may be demanded upon it.

6159. On a resolution for the adoption of a series of rules, which were not presented as a part of the resolution, it was held not in order to demand a separate vote on each rule.—On December 2, 1901,[2] at the time of the organization of the House, the question was on agreeing to the following resolution:

Resolved, That the rules of the House of Representatives of the Fifty-sixth Congress be adopted as the rules of the House of Representatives of the Fifty-seventh Congress, etc.

Mr. Claude A. Swanson, of Virginia, said:

The resolution contains a proposition that we adopt all the rules of the last House, and therefore each rule is made a part of it.

So he demanded a vote on each rule.

The Speaker [1] said:

The Chair is clearly of the opinion that such a demand can not be entertained.

6160. A division of the question may not be demanded after the yeas and nays have been ordered.—On May 29, 1896,[3] the House was considering the South Carolina contested election case of Johnston *v.* Stokes, and the previous question had been ordered on the resolutions reported by the Elections Committee and on a substitute which had been offered therefor. This substitute consisted of two resolutions, declaring, in the usual form, the first that Mr. Stokes was not elected, and the second that Mr. Johnston was elected.

The Speaker first put the question on the substitute, and, a rising vote having been had, announced ayes 78, noes 84.

Mr. Jesse Overstreet, of Indiana, asked for the yeas and nays, which were ordered.

At this point Mr. Henry R. Gibson, of Tennessee, asked for a division of the resolutions.

The Speaker [4] held that the request was too late, the resolutions already having been voted on together and the yeas and nays having been ordered.

6161. On January 21, 1897,[5] the question was upon the two resolutions in the contested election case of Yost *v.* Tucker, from Virginia. The division on the adoption of the resolutions resulted in ayes 115, noes 7.

The point of no quorum being made by Mr. William P. Hepburn, of Iowa, and the count of the Speaker having disclosed only 150 Members present, a call of the House was considered as ordered under section 4 of Rule XV, and as a consequence the yeas and nays on the pending question were at the same time considered as ordered.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-seventh Congress, Record, p. 48.

[3] First session Fifty-fourth Congress, Record, p. 5914.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Fifty-fourth Congress, Record, p. 1042.

Mr. Hepburn demanded a division of the question, there being two questions to be voted upon.

The Speaker [1] ruled that the demand came too late, as the yeas and nays had been ordered.

6162. A division of the question may not be demanded after it has been put by the Chair.—On February 7, 1894,[2] the House resumed consideration of the resolutions relating to Hawaiian affairs. The question was put, Will the House agree thereto?

Mr. Thomas B. Reed, of Maine, demanded that the question on agreeing to the resolutions be divided, so as to enable the House to vote separately on each of the propositions therein contained.

The Speaker [3] held that it was too late after the question was put to demand a division of the question on agreeing to the resolutions.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 143; Record, p. 2001.

[3] Charles F. Crisp, of Georgia, Speaker.