

liberty to appoint under this section as it now stands.

Mr. SCHLEY. The difficulty alluded to had occurred to me, and I have prepared an amendment to rectify it, which I will offer, lest there should be some difficulty in the mind of the governor. I propose to strike out of the first line of the section the words, "by and with the advice," and insert "subject to the approval." It will then read—"The governor shall, subject to the approval and consent of the senate, appoint," &c.

I have no doubt myself that the governor would have perfect authority to appoint under the section as it now stands; and I cannot conceive how there should be any question in the mind of the executive about his power to do so. But lest such a doubt should arise, I propose to remove it by these words: "Subject to the approval," looks to the ulterior approval of the senate, not to any antecedent approval, as may be implied now. "By and with the advice and consent" may be held to mean an advice and consent at the time of the appointment. But if it is made subject to the approval and consent of the senate—

The PRESIDENT. Whenever convened.

Mr. SCHLEY. Well, I have no objection to adding those words, but I did not think it necessary. The approval must be ulterior and not antecedent.

The PRESIDENT. The advice and consent of the senate must be subsequent to.

Mr. SCHLEY. Very well; I will adopt the suggestion of the President, and move to amend the section so that it shall read—"subject to the approval and consent of the senate, whenever convened."

Mr. RIDGELY. The amendment of the gentleman from Frederick (Mr. Schley) is obnoxious to the same difficulty that is supposed to exist in this section as it now stands. I understand the governor's view is that this is not an act that he is capable of performing, unless with the advice and consent of the senate; and it would be the same with the advice and approval of the senate. I did not suppose myself that that difficulty was really well taken; because it seemed that the language of this section was of itself sufficiently clear and explicit to convey the idea that the power to be here exercised by the governor would be corresponding with all other powers exercised by him, by and with the advice and consent of the senate; that like other appointments, this would be sent to the senate for confirmation or rejection whenever they should meet. But as the governor states this difficulty, it would be proper for us to obviate it. And the committee had prepared an amendment which I will read now, and which will perhaps better meet the case than the amendment proposed by the gentleman from Frederick. I propose to strike out the words "by and with the ad-

vice and consent of the senate," and to add to the end of the section the following proviso:

"Provided, however, that such appointment of State superintendent of public schools, shall be nominated to and confirmed by the senate during the first session after this first appointment."

The PRESIDENT. Why not insert after the words "by and with the advice and consent of the senate," the words "at its first session?"

Mr. STIRLING. I would suggest that the difficulty may be rather technical, but it still exists, it seems to me, even with these proposed changes. The expression "with the advice of the senate" implies some contemporaneous action, and if you say "at its first session," it still leaves the same doubt.

Mr. CUSHING. How would it do to amend the section in this way; strike out the words "within ten days after the ratification by the people of this constitution," where that now stands, and add to the section the following:

"The first appointment shall be made by the governor within ten days after the ratification by the people of this constitution, and shall be ratified by the senate at its first session thereafter."

Mr. RIDGELY. The amendment I offered does not meet the case as concisely and precisely as the one suggested by the chair. I therefore would move to insert after the words "consent of the senate" the words "at its first session thereafter."

Mr. SCHLEY. I think that will accomplish the purpose, and therefore I will withdraw my amendment.

The question was upon the amendment as proposed by Mr. RIDGELY.

Mr. MILLER. The objection I have to this section as it stands—and the amendment as proposed by the gentleman from Baltimore county (Mr. Ridgely) still leaves it objectionable—is that the governor is required to appoint this very important officer within ten days after the ratification of this constitution by the people. And then this officer, by another part of this section, is required within thirty days after the meeting of the next legislature—that is, before the first of February next after his appointment—to devise a plan for a uniform system of public schools throughout the State and report it to the legislature. And if the legislature does not adopt that plan, or provide some other at its first session, then by virtue of the third section of this report the plan devised by the State superintendent is to become *ipso facto* the law of the land. Now, it seems to me that that is too short a time in which to accomplish such a work as this.

In the first place, the governor is allowed too short a time to look around to get the best man to fill this important office. And