

this privilege of taking oysters, as the *first of these questions* contemplates. That proposing to confine the privilege of taking oysters in the *entire* Chesapeake Bay and its tributaries, being navigable waters to the citizens of the counties bordering on such navigable waters to the exclusion of all other citizens of the State. Public policy and other reasons may induce the Legislature in its wisdom to exceed what has been hitherto done in the premises, and enact such a law and thereby exclude a majority of the people of this State, perhaps from this common privilege, and yet I am not prepared to say, *a priori*, that it is *not competent* for the Legislature to do so.

The power of the Legislature of this State over this subject, I think is complete—no power over it exists elsewhere. No direct power is granted to Congress over the soil under navigable waters, consequently it remains subject to State Legislation.

9 Wheat, 1, Gibbon vs. Ogden.

This unlimited source of incalculable wealth to the State, lying buried at the bottom of our waters to be made useful and answer the purposes designed by a bountiful Creator must be the subject of constant care and protection by some power claiming ownership. That wise and orderly maxim of the common law of assigning to every thing capable of ownership a legal and determinate owner, whereby confusion is avoided and litigation prevented is important in its application to this subject. The rights of the citizens of this State are to be exercised in subordination to the laws of this State regulating the catching of oysters, &c., as the Legislature may enact for the public good.

It may be unwise, even unjust, to some of our own citizens thus to exclude them from this common privilege, especially to the full extent stated in this first question. That, however, would not show that the right does not exist but that it was not wisely exercised. The same may take place with any of the admitted powers of the Government. We must rely upon the wisdom and virtue of the Legislators to do as little as possible, that may injure the rights of the people, and when done, as speedily as possible redress their wrongs. The spirit of the 41st article of the Declaration of Rights, if not its letter, "That monopolies are odious, contrary to the spirit of our Government and the principles of commerce, and ought not to be suffered," will no doubt have a wholesome influence in restraining unwise or doubtful discriminations against our own citizens in the legislation on this subject.

I, therefore, conclude on this first question by expressing the opinion that it is *competent* for the Legislature to pass such a law as is described in the first question submitted.

The second question relates to the right of the State to pass