

Maryland Code, title Oysters, secs. 2, 3 and 4.  
 Massachusetts General Statutes, pages 431, 432.  
 Mississippi Revised Code, page 222.  
 Maine Revised Statutes, pages 504, 505.  
 Connecticut Statutes, pages 563, 564.  
 Delaware Revised Code, pages 150, 151, 152.  
 North Carolina Revised Code, pages 449, 450.

There is one single exception to this discriminating power of the Legislature in favor of our own citizens and against the citizens of other States, that is in regard to the citizens of Virginia, against whom alone no such discrimination can be made in catching oysters in the Potomac, and perhaps in the Pocomoke Rivers. By the compact between the States of Maryland and Virginia [see Act of 1785, ch. 1, sec. 8] it is provided that all laws and regulations for the preservation of fish, &c., in the River Potomac shall be by the mutual consent of both States, &c. This necessity for concurrent legislation by the two States on the subject of the oyster laws has been recognized by our Court of Appeals in 9th Maryland Rep., 31—the State vs. Hoofman—as to the Potomac River. This discrimination in favor of citizens of Maryland fishing and oystering in both the Pocomoke and Potomac Rivers is made by the legislation of Virginia.

See Code page 452.

The third question—what has been before written in relation to the first and second questions will in a great degree apply to this the third question. If as contended under the first question, the Legislature have the power to confine this right of catching oysters to the citizens of some of the counties to the exclusion entirely of the citizens of the other counties of the State, they would have the power to restrict those citizens as to the instruments by which the oysters are to be caught, the mode, by license or otherwise, which the Legislature may adopt as evidence of the grant of this right to catch them, and the amount of money to be paid for these licenses. The greater power to exclude entirely comprehends the lesser to limit, modify and regulate the mode of exclusion.

Again, what has been before written suggesting most respectfully doubts as to the wisdom or policy, not the power of such exclusive legislative action as is implied in the first question, may be referred to on this third question, and perhaps for stronger reasons, because this assumed right of the Legislature to exclude the citizens of certain counties from the grant of these licenses is not limited to the citizens of the State, who do not reside in counties bordering on the Bay, &c., but is entirely arbitrary and regardless of their localities; nevertheless as before written, I do not doubt as to the power of the Legislature to pass any such law of restriction or discrimination on this subject, as to their own citizens as suggested in the third question.