

So much of this question as relates to the power of the Legislature of this State to exclude the citizens of the other States from catching oysters in this State, has been answered in what has been before written on the second question. The power of the State in their legislation on the subject to exclude entirely the citizens of other States from catching oysters in this State, or to limit or restrict their exercise of this right beyond the limits and restrictions imposed upon the citizens of this State is abundantly shown in the authorities referred to, and the legislation of the different States before written.

The Fourth Question:—In what has been written on the other questions I have anticipated much that applies to this. In expressing the opinions that there is no State constitutional prohibition to the passage of such laws as those questions contemplate, and that the second section of the fourth Article of the Constitution of the United States constitutes no such prohibition.

The only other clauses in the Constitution of the United States which it has been contended constitute such a prohibition, are the 8th section of the 1st Article, giving to Congress the power to regulate commerce with foreign nations, and among the several States, &c.; and the second section of the third Article, declaring that the Judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction, but these clauses, it will appear, constitute no such prohibition from the quotations following:

“The Power of Congress over commerce, &c., [8th section of the 1st Article of Cons. of U. S.,] which comprehends the use of and passage over navigable waters of the several States, does in no manner impair the rights of State Governments to legislate on all subjects of internal police within their territorial limits not forbidden by the Government of the United States, even though such legislation may indirectly and remotely affect commerce, provided it do not interfere with the regulations of Congress upon the same subject.”

4 Wash. C. C. Rep., 376.

“If fisheries and oyster beds within the territorial limits of the State, are the common property of the citizens thereof, and were not ceded to the United States by the power granted to Congress, to regulate commerce, it is difficult to perceive how a law of a State, regulating the use of this common property, under such penalties and forfeitures as the State Legislature may prescribe, can be said to be in conflict with the powers so granted.”

4 Wash. C. C. Rep., 379.

“The oyster bed is local, attached to the soil, and belongs to the owner of the soil, and may be used by him for his own