

JOHNSON, JR., ET AL. v. HAYDEL ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA

No. 69. Argued April 18, 1928.—Decided October 15, 1928.

Denial of a temporary injunction to restrain enforcement of certain provisions of the Louisiana "Oyster Act," held erroneous, upon the authority of *Foster-Fountain Packing Co. v. Haydel*, ante, p. 1. Reversed.

APPEAL from an order of the District Court of three judges, refusing a temporary injunction in a suit to restrain enforcement of a statute of Louisiana concerning the taking of oysters. The case was argued with the one preceding, by the same counsel.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Appellants, plaintiffs below, are engaged in the business of catching and canning oysters for shipment and sale in interstate commerce. Appellees, defendants below, are public officers in Louisiana charged with the duty of enforcing Act No. 258, known as the "Oyster Act," passed in July, 1926, entitled: "An Act To declare all oysters and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the Oyster industry of the State of Louisiana . . ." Plaintiffs sued to enjoin enforcement of certain of its provisions on the ground, among others, that they violate the commerce clause of the Federal Constitution. The district judge granted a restraining order pending application for a temporary injunction. There was a hearing before the court, consisting of three judges, organized as required by § 266 of the Judicial Code, U. S. C. Tit. 28, § 380; it set

aside the restraining order and denied the injunction. Then, the court allowed this appeal, found that the plaintiffs will sustain irreparable harm and damage, and stayed the enforcement of the Act pending determination here.

The purpose of this Act is the same in respect of oysters as that of Act. No. 103 in respect of shrimp, considered in *Foster-Fountain Packing Co. v. Haydel*, ante, p. 1. The challenged provisions of the one closely correspond to those of the other. The two cases present similar issues of law and fact. The showing made by plaintiffs in support of their motion for temporary injunction is substantially the same as was made in that case. Our decision there controls this case.

Decree reversed.

MANEY v. UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 27. Argued October 11, 1928.—Decided October 22, 1928.

1. A certificate of citizenship which was granted by the District Court without authority and contrary to law, is a certificate "illegally procured" within the meaning of § 15, Naturalization Act of 1906, directing district attorneys to institute proceedings for cancellation. P. 22.
2. Under the Act of 1906, a certificate from the Department of Labor stating the date, place and manner of the applicant's arrival in the United States must be filed with the petition for naturalization. This requirement is jurisdictional, and failure to comply with it cannot be cured by a subsequent filing allowed *nunc pro tunc*. So held where the decree was made within ninety days after the actual filing of the certificate. P. 23.
3. A decree of the District Court admitting an applicant to citizenship against the objection of the United States that the court had no jurisdiction because a certificate of arrival was not filed until after the filing of the petition for naturalization, is not *res judicata* barring a suit by the United States under § 15 of the Naturalization