

Opinion of the Court.

SAFEWAY STORES, INC., v. VANCE, TRUSTEE IN
BANKRUPTCY.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT.

No. 69. Argued November 21, 1957.—Decided January 20, 1958.

A private action for treble damages under § 4 of the Clayton Act, as amended, may be maintained for unlawful price discriminations violative of § 2 of the Clayton Act, as amended, but not for sales at unreasonably low prices which violate only § 3 of the Robinson-Patman Act. *Nashville Milk Co. v. Carnation Co.*, ante, p. 373. Pp. 389-390.

239 F. 2d 144, judgment vacated and cause remanded.

John B. Tittmann argued the cause for petitioner. With him on the brief was *Douglas Stripp*.

Robert J. Nordhaus argued the cause for respondent. With him on the brief was *Sam Dazzo*.

MR. JUSTICE HARLAN delivered the opinion of the Court.

This is a companion case to No. 67, *Nashville Milk Co. v. Carnation Co.*, decided today, ante, p. 373. In the present case the Court of Appeals has held that a private action for treble damages* does lie under § 4 of the Clayton Act for violation of § 3 of the Robinson-Patman Act. 239 F. 2d 144. Because of the conflict with the decision of the Court of Appeals for the Seventh Circuit in the *Nashville Milk Co.* case, 238 F. 2d 86, we granted certiorari. 352 U. S. 1023.

The complaint in this case alleges both sales "at unreasonably low prices" and price discriminations in violation of § 3 of the Robinson-Patman Act. For the reasons set

*The complaint does not ask for injunctive relief under § 16 of the Clayton Act.

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forth in our *Nashville Milk Co.* opinion, *ante*, p. 373, we hold that the complaint should have been dismissed insofar as it rests on alleged unlawful selling at unreasonably low prices, and that the respondent was entitled to a trial as to the charges of unlawful price discrimination. Accordingly, the judgment of the Court of Appeals is vacated, and the case is remanded to the District Court for further proceedings consistent with this opinion.

It is so ordered.

[For dissenting opinion of Mr. JUSTICE DOUGLAS, joined by THE CHIEF JUSTICE, Mr. JUSTICE BLACK and Mr. JUSTICE BRENNAN, see *ante*, p. 383.]