

Per Curiam.

UNITED STATES v. PARKE, DAVIS & CO.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA.

No. 526. Decided January 23, 1961.

Holding that the Government's proofs were sufficient to show that respondent had violated the Sherman Act, this Court reversed the District Court's judgment dismissing the complaint and remanded this case with directions to afford respondent a further opportunity to submit evidence to refute the Government's right to injunctive relief. 362 U. S. 29. On remand, respondent introduced evidence, not to rebut the Government's proof as to violation but only to show that it had abandoned its illegal sales policy and that, therefore, an injunction was not necessary. The District Court entered an order denying not only injunctive relief but also an adjudication that respondent had violated the law. *Held*: The Government is entitled to a judgment on the merits, and the District Court should retain the case on the docket for future action if the Government applies for further relief from an alleged resumption by respondent of illegal activity. Pp. 125-126.

— F. Supp. —, judgment vacated and cause remanded.

Solicitor General Rankin, Assistant Attorney General Bicks, Daniel M. Friedman and Richard A. Solomon for the United States.

Gerhard A. Gesell, Edward S. Reid, Jr. and Roberts B. Owen for appellee.

PER CURIAM.

When this case was last here we held that the Government's proofs were sufficient to show that Parke Davis violated the Sherman Act. However, in reversing the District Court's judgment we remanded the case with direction to afford Parke Davis a further opportunity to submit evidence in defense in order to refute the Government's right to injunctive relief. *United States v.*

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Parke, Davis & Co., 362 U. S. 29, 49. On remand, Parke Davis introduced evidence not to rebut the Government's proof as to violation but only to show that it had abandoned its illegal sales policy, and that therefore an injunction, being unnecessary, should not issue. On that record the District Court entered an order denying not only the injunctive relief sought by the Government, but also an adjudication that Parke Davis had violated the law. The present appeal is not from the provision which denies injunctive relief, but from the omission of a provision adjudging that Parke Davis violated the Act. We have examined the record as supplemented on the remand and hold that under our prior order the Government is entitled to a judgment on the merits, as prayed in paragraph 1 of the section of the Complaint captioned "Prayer." We also hold that the District Court should retain the case on the docket for future action in the event the Government applies for further relief from an alleged resumption by Parke Davis of illegal activity. The order of the District Court filed July 18, 1960, is therefore vacated and the case is remanded to the District Court with direction to enter judgment accordingly.

It is so ordered.

MR. JUSTICE HARLAN, with whom MR. JUSTICE FRANKFURTER agrees, would place this case on the summary calendar for argument, postponing to the merits consideration of the question of jurisdiction raised by the respondent.