

Syllabus

IN THE MATTER OF

SHELTON TUBULAR RIVET COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3107. Complaint, Apr. 17, 1937—Decision, June 14, 1938

Where 11 corporations, engaged in manufacture and sale of industrial rivets, namely, tubular, split, and outside pronged rivets, including compressed rivet sets, countersunk rivets, shoulder rivets, etc., but not solid rivets, constituting a substantial majority of all manufacturers of such rivets in the United States for several years last past, and members or former members of a voluntary, unincorporated organization, composed of principal manufacturers of such products in the United States, selling and distributing the major part of the total amount of such rivets produced therein, and theretofore in open competition among themselves as to price in the sale of said industrial rivets between and among the various States and in the District of Columbia: their aforesaid organization, established for the purpose, among others, of aiding them in carrying out more effectively the hereinbelow set forth agreements and combinations; and the president of said organization, and director and in control of its activities for and on behalf of its members: with intent of eliminating price competition among themselves—

Entered into and carried out an understanding, agreement, combination and conspiracy among themselves to fix and maintain, and by which they did fix and maintain, uniform delivered prices to be exacted by them from the purchasers of such industrial rivets, and thus to fix the delivered prices thereof between and among the various States and in the District of Columbia; and in pursuance of such understandings, etc., and to carry out the same, among other things—

- (1) Agreed, among themselves, to fix and maintain and, pursuant thereto, fixed and maintained uniform delivered prices, including discounts thereon, for such rivets sold by the members of the aforesaid organization and each of them;
- (2) Induced certain of their members, by intimidation and persuasion, to raise their quoted prices, including discounts, to the uniform delivered prices fixed as above set forth by the aforesaid understanding, etc.; and
- (3) Held meetings of said organization, its members and officers, to devise methods of asserting influence, pressure, coercion, or other means of inducing coercing and requiring manufacturers and producers of industrial rivets to fix, establish, and maintain prices and fix the established and published prices, together with designated discounts therefor, and to abide by and adhere to such uniform prices and discounts thus fixed;

With capacity, tendency, and effect of monopolizing in themselves the business of manufacturing, dealing in, and distributing such industrial rivets, unreasonably lessening, eliminating, restraining, stifling, hampering, and suppressing competition in said industry, depriving the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unob-

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structed or free and fair competition in such industry, and to otherwise operate as a restraint in trade and a detriment to the freedom of fair and legitimate competition in said industry and to obstruct the natural flow of trade in the channels of commerce among and between the several States: Held, That such acts and practices and each of them were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Robert A. B. Cook of Phipps, Durgin & Cook, of Boston, Mass., and *Babcock, Hollister, Brown & Newbury*, of Buffalo, N. Y., for respondent Shelton Tubular Rivet Co., respondent The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers and nine other respondents, and, as associated with other counsel for three other respondents as below set forth, namely, with—

Winston, Strawn & Shaw, of Chicago, Ill., for Chicago Rivet & Machine Co.;

Larkin, Rathbone & Perry, of New York City, for Penn Rivet Corporation;

Mr. Francis T. Reeves, of Waterbury, Conn., for Scovill Mfg. Co.

Hutchins & Wheeler, of Boston, Mass., along with *Mr. Robert A. Cook*, for Judson L. Thomson Mfg. Co.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the parties described in the caption hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Shelton Tubular Rivet Co., is an unincorporated company entirely owned, controlled, and operated by the hereinafter named respondent Shelton Tack Co. It has its main office and principal place of business at Shelton, Conn.

Respondent, Shelton Tack Co., is a corporation organized and existing pursuant to the laws of the State of Connecticut, having its principal office and place of business at Shelton, Conn.

Respondent, Tubular Rivet & Stud Co., is a corporation organized and existing pursuant to the laws of the Commonwealth of Massachusetts, having its principal office and place of business at 87 Lincoln Street, Boston, Mass.

Respondent, Judson L. Thomson Mfg. Co., is a corporation duly organized and existing pursuant to the laws of the Commonwealth of Massachusetts, having its principal office and place of business on South Street, Waltham, Mass.

Respondent, Milford Rivet & Machine Co., is a corporation duly organized and existing pursuant to the laws of the State of Connecticut, having its principal office and place of business in Milford, Conn.

Respondent, Chicago Rivet & Machine Co., is a corporation organized and existing pursuant to the laws of the State of Illinois, having its principal office and place of business at 1830 South Fifty-fourth Avenue, Chicago, Ill.

Respondent, Manufacturer's Belt Hook Co., is a corporation organized and existing pursuant to the laws of the State of Illinois, having its office and principal place of business at 1315 West Congress Street, Chicago, Ill.

Respondent, National Rivet & Mfg. Co., is a corporation organized and existing pursuant to the laws of the State of Wisconsin, having its principal office and place of business at Waupun, Wis.

Respondent, Scovill Mfg. Co., is a corporation organized and existing pursuant to the laws of the State of Connecticut, having its principal office and place of business on Mill Street, Waterbury, Conn.

Respondent, Penn Rivet Corporation, is a corporation organized and existing pursuant to the laws of the State of Virginia, having its principal office and place of business at Third and Huntingdon Streets, Philadelphia, Pa.

Respondent, Townsend Co., is a corporation organized and existing pursuant to the laws of the State of Pennsylvania, having its principal office and place of business at New Brighton, Pa.

Respondent, John Hassall, Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its principal office and place of business at Clay and Oakland Streets, Brooklyn, N. Y.

Respondent, J. W. Coombs Mfg. Co., Inc., is a corporation organized and existing pursuant to the laws of the State of Delaware, having its principal office and place of business at Fort Washington, Pa.

PAR. 2. The respondent, The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, sometimes known as The Institute of Tubular and Split Rivet Manufacturers, is a voluntary unincorporated organization composed of the principal manufacturers of industrial rivets in the United States which sell and distribute the major part of the total amount of industrial rivets produced in the United States. It has its office and principal place of business in

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care of the National Rivet & Mfg. Co., Waupun, Wis. It was organized in the summer or fall of 1933 as a trade association for the industrial rivet manufacturing industry. All of the respondents named in paragraph 1 hereof are or have been members of this association. It had, and now has, for its purpose, among others, the more effectively aiding of said respondents named in paragraph 1 hereof to carry out the unlawful agreement, combination, and conspiracy set forth in paragraph 5 hereof.

Respondent, William Fleming, Jr., individually, and as president of the Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, has his office in care of the National Rivet & Mfg. Co., at Waupun, Wis., of which firm he is the president. He directs and controls, for and on behalf of the members thereof, the activities of the Institute as hereinafter charged.

PAR. 3. The respondents named in paragraph 1 hereof are now engaged in the manufacture of rivets and similar products at their various plants and factories. These rivets are used for industrial purposes and are described in various ways such as: Semi-tubular Rivets, Full Tubular Rivets, Split Rivets, Counter Sunk Rivets, Shoulder Rivets, Outside Pronged Rivets, Rivet Caps, Bifurcated Rivets, Brake Lining Rivets, Harness Rivets, etc. The respondents do not manufacture the type of rivet used for heavy construction work.

In the course and conduct of the respective businesses of the said respondents named in paragraph 1 hereof, said respondents have for more than 3 years last past caused and still cause said rivets when sold by them to be transported in interstate commerce from their respective places of business to, into and through various States of the United States, other than the States in which they respectively have their factories and places of business, to the purchasers thereof in such other States to which such rivets are and have been sold.

PAR. 4. The aforesaid respondents named in paragraph 1 hereof now constitute and for more than 3 years last past have constituted a substantial majority of all manufacturers of industrial rivets in the United States. The said respondents were, prior to 1933 or thereabouts, in open competition among themselves as to price in the sale of industrial rivets between and among the various States of the United States and the District of Columbia. But for the combination, understanding, agreement, and conspiracy hereinafter described, they would have been, at all times since 1933 or thereabouts, and would be now, in such price competition with one another.

PAR. 5. The respondents named in paragraph 1 hereof, acting directly and through their respective representatives, and acting in

cooperation with each other and with the respondent, The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers and its officers, of which the respondent William Fleming, Jr., is one, beginning in the year 1933 and continuing to the present date, entered into, and since carried out, an agreement, combination, understanding, and conspiracy to restrict, restrain, suppress, and eliminate competition and to create a monopoly in the sale and distribution of industrial rivets in commerce among and between the several States of the United States, as described herein.

In furtherance of said agreement, combination, understanding, and conspiracy, referred to above, and in order to more completely effectuate the same, said respondents named in paragraph 1 hereof, acting directly and through their respective representatives and acting in cooperation with each other, agreed to organize, and did organize and still participate in the operation and control of respondent, The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, and since its organization have participated and now participate in the activities of said Institute, as more fully hereinafter set out.

Pursuant to, and for the purpose of carrying out said agreement, combination, understanding, and conspiracy referred to above, said respondents named in paragraph 1 hereof, acting directly and through their designated representatives, and acting in cooperation with each other, and in cooperation with the respondent, The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, and its officers, have committed and performed, and continue to, and now do, perform and engage in, among others, the following acts and practices:

(a) Agreed among themselves to fix and maintain and pursuant to such agreement have fixed and maintained and still fix and maintain uniform delivered prices for industrial rivets sold by the aforesaid members of the said The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, and each of them.

(b) Induced certain of the aforesaid other respondents by intimidation and persuasion to raise their prices quoted by them to the uniform delivered prices fixed as aforesaid by the aforesaid combination, conspiracy, understanding, and agreement.

(c) Held meetings of The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, its members and officers to devise methods of asserting influence, pressure, coercion, or other means of inducing coercion and requiring manufacturers and producers of industrial rivets to fix, establish, and maintain prices and fix the established and published prices as well as to abide by and adhere to said uniform price lists so fixed.

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(d) Used and engaged in other cooperative acts, coercive means, and practices in promoting the establishment of and carrying out the aforesaid program and understanding, combination, conspiracy, and confederation set forth herein.

PAR. 6. The capacity, tendency, and effect of said agreement, combination, understanding, and conspiracy, and the acts and practices of the respondents as set forth herein, are, and have been, to monopolize in said respondents the business of manufacturing, dealing in, and distributing industrial rivets; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry; to deprive the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in such industry; to otherwise operate as a restraint in trade and a detriment to the freedom of fair and legitimate competition in said industry; and to obstruct the natural flow of trade in the channels of commerce among and between the several States of the United States.

PAR. 7. The above alleged acts and things done by respondents as set forth herein are monopolistic practices and to the prejudice and injury of the public and constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 17, 1937, issued and served its complaint in this proceeding upon the respondents herein, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequent to the issuance and service of said complaint, the respondents filed their answers thereto, in which answers the respondents (except the Penn Rivet Corporation and the Scovill Mfg. Co., both of whom pray dismissal of this proceeding as to them) admitted, for the purposes only of this proceeding, and any proceedings which may be brought or instituted under the Federal Trade Commission Act as amended and approved March 21, 1938, for the recovery of penalties therein provided in case of violation of any order to cease and desist which may be issued hereunder, all of the material allegations of said complaint, insofar as the same relate to the business of selling or offering

for sale industrial rivets, which term as used herein shall be deemed to mean tubular, split, and outside pronged rivets, including compressed rivet sets, countersunk rivets, shoulder rivets, bifurcated rivets, rivet caps, brake lining rivets, harness rivets, and similar rivets, but not, however, including solid rivets, and also stated in such answers that the Commission might without trial, without the taking of further evidence, and without any intervening procedure, make and enter its findings as to the facts and issue and serve upon them and each of them an order to cease and desist from the unfair methods of competition alleged in said complaint, insofar as they relate to the business of selling or offering for sale of industrial rivets as above defined.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the said answers thereto, and the motions to dismiss filed on behalf of the Penn Rivet Corporation and the Scovill Mfg. Co., and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Shelton Tubular Rivet Co., is an unincorporated company entirely owned, controlled, and operated by the hereinafter named respondent, Shelton Tack Co. It has its main office and principal place of business at Shelton, Conn.

Respondent, Shelton Tack Co., is a corporation organized and existing pursuant to the laws of the State of Connecticut, having its principal office and place of business at Shelton, Conn.

Respondent, Tubular Rivet & Stud Co., is a corporation organized and existing pursuant to the laws of the Commonwealth of Massachusetts, having its principal office and place of business at 87 Lincoln Street, Boston, Mass.

Respondent, Judson L. Thomson Mfg. Co., is a corporation duly organized and existing pursuant to the laws of the Commonwealth of Massachusetts, having its principal office and place of business on South Street, Waltham, Mass.

Respondent, Milford Rivet & Machine Co., is a corporation duly organized and existing pursuant to the laws of the State of Connecticut, having its principal office and place of business at Milford, Conn.

Respondent, Chicago Rivet & Machine Co., is a corporation organized and existing pursuant to the laws of the State of Illinois, having

its principal office and place of business at 1830 South Fifty-fourth Avenue, Chicago, Ill.

Respondent, Manufacturer's Belt Hook Co., is a corporation organized and existing pursuant to the laws of the State of Illinois, having its office and principal place of business at 1315 West Congress Street, Chicago, Ill.

Respondent, National Rivet & Mfg. Co., is a corporation organized and existing pursuant to the laws of the State of Wisconsin, having its principal office and place of business at Waupun, Wis.

Respondent, Scovill Mfg. Co., is a corporation organized and existing pursuant to the laws of the State of Connecticut, having its principal office and place of business on Mill Street, Waterbury, Conn.

Respondent, Penn Rivet Corporation, was a corporation organized and existing pursuant to the laws of the State of Virginia, but has, since the institution of this proceeding, been dissolved by a certificate of dissolution issued by the State of Virginia under date of May 5, 1937.

Respondent, Townsend Co., is a corporation organized and existing pursuant to the laws of the State of Pennsylvania, having its principal office and place of business at New Brighton, Pa.

Respondent, John Hassall, Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its principal office and place of business at Clay and Oakland Streets, Brooklyn, N. Y.

Respondent, J. W. Coombs Mfg. Co., Inc., is a corporation organized and existing pursuant to the laws of the State of Delaware, having its principal office and place of business at Fort Washington, Pa.

The respondent, The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, sometimes known as The Institute of Tubular and Split Rivet Manufacturers, is a voluntary unincorporated organization composed of the principal manufacturers of industrial rivets, as hereinabove defined, in the United States, which sell and distribute the major part of the total amount of said rivets produced in the United States. It has its office at Waupun, Wis. It was organized in the summer or fall of 1933 as a trade association for the rivet manufacturing industry. All of the respondents named above are now or have been members of this association. It had, and now has, for its purposes, among other things, the more effectively aiding of said respondents named above to carry out the unlawful agreement and combination set forth in paragraph 4 hereof.

The respondent, William Fleming, Jr., individually and as president of The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, his office in care of the National Rivet & Mfg. Co., at Waupun, Wis. He directs and controls, for and on behalf of the members thereof, the activities of the Institute.

PAR. 2. The aforesaid members of the aforesaid Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, named in paragraph 1 hereof, are now, and for more than 3 years last past have been, engaged at their respective places of business in the manufacture of industrial rivets, as hereinabove described, of various sizes and dimensions.

In the course and conduct of their business, all of the said respondents named in paragraph 1 hereof, for more than 3 years last past, have caused and still cause said rivets when sold by them to be transported in interstate commerce from their respective places of business to, into and through the District of Columbia and the various States of the United States, other than the States in which they respectively have their factories and places of business, to the purchasers thereof in such other States and in the District of Columbia.

PAR. 3. The aforesaid respondents, named in paragraph 1 hereof, now constitute and for more than 3 years last past have constituted a substantial majority of all manufacturers of industrial rivets, as hereinabove described, in the United States. The said respondents were, prior to 1933 or thereabouts, in open competition among themselves as to price in the sale of industrial rivets as hereinabove defined between and among the various States of the United States and in the District of Columbia. But for the understanding, agreement, combination, and conspiracy hereinafter described, they would have been, at all times since 1933 or thereabouts, and would be now, in such price competition with one another.

PAR. 4. During the year 1933, the following-named respondents: Shelton Tubular Rivet Co., Shelton Tack Co., Tubular Rivet & Stud Co., Judson L. Thomson Mfg. Co., Milford Rivet & Machine Co., Chicago Rivet & Machine Co., Manufacturer's Belt Hook Co., National Rivet & Mfg. Co., Townsend Co., John Hassall, Inc., J. W. Coombs Mfg. Co., Inc., The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, and William Fleming, Jr., individually and as president of The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, for the purpose of eliminating price competition among themselves, entered into and have since carried out an understanding, agreement, combination, and conspiracy among themselves to fix and maintain, and by which they have fixed and main-

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tained, uniform delivered prices to be exacted by them from the purchasers of said industrial rivets, as hereinabove defined, and thus to fix the delivered prices of said rivets entering into commerce between and among the various States of the United States and of the District of Columbia. Pursuant to, and for the purpose of, carrying out said understanding, agreement, combination, and conspiracy, said respondents have, among other things, done the following:

(a) Agreed among themselves to fix and maintain, and, pursuant to such agreement, have fixed and maintained uniform delivered prices, including discounts thereon, for industrial rivets, as hereinabove defined, sold by the aforesaid members of the said The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, and each of them.

(b) Induced certain of the aforesaid respondents by intimidation and persuasion to raise the prices quoted by them, including discounts, to the uniform delivered prices fixed as aforesaid by the aforesaid understanding, agreement, combination, and conspiracy.

(c) Held meetings of The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, its members and officers to devise methods of asserting influence, pressure, coercion or other means of inducing coercion, and requiring manufacturers and producers of industrial rivets, as hereinabove defined, to fix, establish, and maintain prices and fix the established and published prices, together with designated discounts therefor, as well as to abide by and adhere to said uniform prices and discounts so fixed.

PAR. 5. The capacity, tendency, and effect of said understanding, agreement, combination, and conspiracy, and the acts and practices of the respondents named in paragraph 4 hereof are, and have been, to monopolize in said respondents the business of manufacturing, dealing in, and distributing industrial rivets as hereinabove defined; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry; to deprive the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in such industry; to otherwise operate as a restraint in trade and a detriment to the freedom of fair and legitimate competition in said industry; and to obstruct the natural flow of trade in the channels of commerce among and between the several States of the United States.

PAR. 6. The manufacture of rivets by the respondent, the Scovill Mfg. Co., is purely incidental to its general manufacturing business, and are made primarily for its own use. It was only a nominal

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member of The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, and there is no evidence that it engaged in the acts and practices referred to in paragraph 4 hereof.

CONCLUSION

The aforesaid acts and practices of the respondents, and each of them, named in paragraph 4 hereof, are all to the prejudice of the public and to their competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers thereto filed herein by all of the respondents, in which answers said respondents (except the Penn Rivet Corporation and the Scovill Mfg., Co., both of whom pray for dismissal), admitted all the material allegations of the complaint, insofar as this proceeding relates to the business of selling or offering for sale of industrial rivets, which term as used herein shall be deemed to mean tubular, split, and outside pronged rivets, including compressed rivet sets, countersunk rivets, shoulder rivets, bifurcated rivets, rivet caps, brake lining rivets, harness rivets, and similar rivets, but not, however, including solid rivets; said admissions having been made only for the purposes of this proceeding and any proceeding which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act, as amended and approved March 21, 1938, for the recovery of penalties therein provided in case of any violation hereof, and respondents (except the said Penn Rivet Corporation and the Scovill Mfg. Co.) having waived the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents (except the said Penn Rivet Corporation and the Scovill Mfg. Co.) have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the said respondents, Shelton Tubular Rivet Co., Shelton Tack Co., Tubular Rivet & Stud Co., Judson L. Thomson Mfg. Co., Milford Rivet & Machine Co., Chicago Rivet & Machine Co., Manufacturer's Belt Hook Co., National Rivet & Mfg. Co., Townsend Co., John Hassall, Inc., J. W. Coombs Mfg. Co., Inc., The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, and William Fleming, Jr., individually and as president of The Institute of Tubular-Split and Outside Pronged Rivet Manu-

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facturers, their respective officers, agents, and employees, cease and desist from entering into and carrying out any understanding, agreement, combination, or conspiracy between and among any two or more of said respondents or between and among any one or more of the respondents and any member or members of the industry for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in the sale in interstate commerce of industrial rivets as hereinabove described and as a part of such understanding, agreement, combination, or conspiracy from doing any of the following acts or things:

(a) Agreeing to fix and maintain and fixing and maintaining uniform delivered prices;

(b) Inducing by intimidation or persuasion members of the industry to raise the prices quoted by them to the uniform delivered prices resulting from said understanding, agreement, combination, or conspiracy;

(c) Holding meetings of The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, its members and officers, to devise methods of asserting influence, pressure, coercion, or other means of inducing or requiring manufacturers and producers of industrial rivets to fix, establish, or maintain prices or to fix, establish, and publish prices for industrial rivets or to abide by or adhere to any uniform price list resulting from such said understanding, agreement, combination, or conspiracy;

(d) Using and engaging in other cooperative acts, coercive means and practices in promoting the establishment of, and carrying out said understanding, agreement, combination, or conspiracy;

Provided, That nothing herein contained shall prevent the lawful gathering, compilation, and distribution to the trade of statistics, including discounts, net prices, terms, and conditions and other particulars of closed transactions.

It is further ordered, That because of its dissolution on May 5, 1937, the complaint herein be, and the same hereby is, dismissed as to the respondent Penn Rivet Corporation;

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent, Scovill Mfg. Co., because there is no evidence showing that it participated in the acts and practices charged in the complaint;

It is further ordered, That all the respondents hereinabove mentioned, except the Penn Rivet Corporation and the Scovill Mfg. Co., shall within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF
AMERICAN HEALTH SOCIETY, INC., AND MEDICAL BOOK
DISTRIBUTORS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2761. Complaint, Apr. 10, 1936—Decision, June 15, 1938

Where two corporations respectively engaged in the publication and sale and sale and distribution of a two-volume set of books entitled "Health Knowledge"—

- (a) Represented, through such statements as "The New, Revised Edition of 1934," on the title page thereof, that said books were modern and new, or recently revised, notwithstanding fact that no substantial revision of the original text, as issued in 1919, had ever been made, either in the 1931 reprint or the 1934 new edition, and the books were not new, up-to-date medical works, but were antiquated and recommended many treatments not now recognized or accepted by the medical profession as being the proper and customary treatment for the particular illnesses or diseases for which recommended, and many of the modern diagnoses and treatments of the various diseases and illnesses mentioned in said publication were omitted;
- (b) Represented that said books were written by outstanding and eminent medical authorities, through statement, on the title page of all copies of each of the various editions, that the editor in chief, whose name was followed by the title "M. D.," was assisted by a corps of competent physicians and surgeons from the leading hospitals, colleges, and universities of the United States and foreign countries, and through including in each edition, among other statements, a list of alleged eminent medical authorities who, allegedly, had contributed to the work, notwithstanding fact that none of said authors contributed in any way toward the writing of the work, though, in various instances, books written by them were consulted, and many of such authorities listed as having been consulted had been dead for a number of years, and, in several instances, authorities thus referred to were never connected with the institution mentioned in such connection by said work; and
- (c) Represented, through use of the corporate name "American Health Society," on the part of said distributor corporation on the identifying cards supplied to its salesmen, along with the statement that the salesman was from such society and authorized to "call on your home and give a health talk," and through trade literature of one sort and another supplied them, and referring to and describing said "Health Knowledge," that the said salesmen were connected with a health society or public or private health authorities, or that the publishers and distributors of such books were endorsed by and affiliated with public health authorities;

With capacity and tendency to mislead and deceive members of the purchasing public and induce them to purchase sets of said "Health Knowledge" in the erroneous belief that it was a modern, up-to-date set of books written by outstanding physicians for use in the home diagnosis and treatment of ailments and diseases, and that the publishers and distributors thereof were