

Index No. ~~100-1-10000-10000~~

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

THE HILL FOUNDATION, INC.,
Plaintiff,
-against-
POSTAL TELEGRAPH-CABLE COMPANY,
Defendant.

(Original)

AFFIDAVIT IN SUPPORT
OF ADJOURNMENT.

SAMUEL MANN,

Attorney for Plaintiff,

70 PINE STREET,
BOROUGH OF MANHATTAN,
CITY OF NEW YORK.

Cal.
#1182
WJ

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

-----X

THE HILL FOUNDATION, INC.,

Plaintiff,

Civil 20-439

-against-

Non-jury Cal. #1183

POSTAL TELEGRAPH-CABLE COMPANY,

Defendant.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

SAMUEL MANN, being duly sworn, deposes and says: I am the attorney for the above-named plaintiff, and make this affidavit in support of an application for an adjournment of the trial of the above-entitled action until October 15th, 1943.

The adjournment is sought upon two grounds. In this action, which was brought to recover damages for infringement of a copyrighted song, the defendant by its answer and in paragraph "23" thereof alleged that the plaintiff is without title to maintain this action upon the ground that plaintiff's assignors had sold and conveyed to Clayton F. Summy Co., a Delaware corporation of Chicago, Illinois, all their right, title and interest in and to the copyrights; that the said assignment was duly recorded in the assignment records of the Copyright Office of the United States, and that the records of the Copyright Office disclose no subsequent assignment from Clayton F. Summy Co. to plaintiff's assignors.

This defense if proven would operate as a bar to the bringing of this action. The true facts however are that the assignment from plaintiff's assignors to Clayton F. Summy Co. was given for a limited period of time only which period of time expired February 28th, 1941, at which date said assignment became

null and void. The assignee, however, Clayton F. Summy Co., refused to execute a reassignment with the result that it became necessary to institute an action by this plaintiff against that concern to procure a reassignment from said defendant to this plaintiff or to plaintiff's assignors.

The action in which such reassignment, among other things is sought, is now pending undetermined in this Court; and has been assigned for trial before HON. JOHN BRIGHT, District Judge, for the 18th day of May, 1943. There are in addition three other causes of action to be tried at the same time and a decision is not expected until sometime after the conclusion of the trial, because of a number of questions of law which must be briefed.

A further ground upon which an adjournment is requested is the fact that plaintiff's two principal witnesses, Miss Patty S. Hill and Miss Jessica M. Hill, both over seventy years of age, are ill and infirm, and must upon doctors' instructions leave New York City for their home at Clinton, Connecticut, immediately upon the conclusion of the trial before Judge Bright. Their physician, Dr. W.W. Herrick of No. 16 East 90th Street, New York City, has informed me that they are afflicted with several severe ailments, and the trial of the first action will be a serious ordeal for them both.

Until however there is a decision in the first case mentioned, it would be impossible for plaintiff to proceed in the instant case; and pending a decision, it is deemed advisable to adjourn this action, by consent, to October 15th, 1943.

Sworn to before me this
17th day of May, 1943.



GRACE D. GORDON
Notary Public, Kings County
Kings County Clerk's No. 483
New York County Clerk's No. 547
Commission Expires March 30, 1945

