

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK.

Case No - 439

THE HILL FOUNDATION, INC.,

Plaintiff,

- against -

POSTAL TELEGRAPH-CABLE COMPANY,

Defendant.

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STIPULATION AND AFFIDAVIT  
FOR ADJOURNMENT.

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BEEKMAN & BOGUE  
*Attorneys for* Plaintiff,

15 BROAD ST.  
BOROUGH OF MANHATTAN  
NEW YORK 5, N. Y.

Cal.  
#  
h-828  
[Signature]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK.

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THE HILL FOUNDATION, INC.,  
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- against -  
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.....

C 70-439  
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STATE OF NEW YORK  
SOUTHERN DISTRICT OF NEW YORK } :ss.  
COUNTY OF NEW YORK

EDWARD K. HANLON, being duly sworn, deposes  
and says:

That he is an attorney at law and a member  
of the firm of Beekman & Bogue and of counsel for the  
plaintiff in this action.

This action was begun on March 2, 1943,  
and issue was joined by the answer served on April 12,  
1943.

This suit was brought under the Copyright  
Laws of United States for an injunction and accounting,  
charging the defendant with infringement of copyright of  
the popular song "Happy Birthday to You", by the use of  
so-called singing telegrams.

Deponent is informed that the trial of  
the suit has previously been adjourned five times. However,  
a further adjournment is here sought to December 8, 1944,  
on stipulation of the attorneys for the parties, for the  
following reason:

At the time this suit was brought another suit was pending in this Court in which the plaintiff here was also plaintiff and one Clayton F. Summy Co., a corporation engaged in the publication and distribution of music, was defendant. That suit had reference to the ownership of the copyrights to the song in question, the plaintiff asserting that Clayton F. Summy Co. had mere restricted rights in the nature of licenses for limited purposes, and Clayton F. Summy Co. claiming to have the fully copyright ownership.

The defendant in the instant case has set up an affirmative defense in this case that the Clayton F. Summy Co. was the owner of the copyrights of the song in question, and that the plaintiff was without title to maintain this action.

The said case between the plaintiff herein and Clayton F. Summy Co. was tried before Judge Bright of this Court in May 1943. The several adjournments

heretofore had with respect to the trial of this action were, as deponent is informed, because of the pendency of said suit between the plaintiff and Clayton F. Summy Co.

Your deponent and his said law firm, Beekman & Bogue, and its predecessor firm Beekman, Bogue, Stephens & Black, were the attorneys for the Clayton F. Summy Co. in the litigation above referred to, and your deponent was in charge thereof and tried the case before Judge Bright.

No decision has ever been rendered by Judge Bright. However, a settlement has finally been arrived at between the plaintiff herein and the Clayton F. Summy Co. and has been consummated, pursuant to which the

Clayton F. Summy Co. is now the assignee of all right, title and interest of the copyrights in question, and of all claims of past infringements thereof, including any claim against the defendant in this action, Postal Telegraph-Cable Company, and Clayton F. Summy Co., under said settlement agreement, was empowered and authorized to take over the prosecution and maintenance of this action.

For that reason, deponent is making this affidavit as of counsel to the plaintiff.

The suit between this plaintiff and the Clayton F. Summy Co. has been discontinued pursuant to the provisions of the settlement agreement.

Said settlement was only consummated on November 2, 1944 and Clayton F. Summy Co. and deponent, as its counsel, have been unable to give consideration to the procedural questions now involved or to familiarize themselves with the case and be in a position adequately to try it.

For the reason above set forth, counsel for both parties have consented to the further adjournment of this case to December 8, 1944, as above stated. Should such adjournment be granted, deponent expects to be in a position to dispose of the matter when reached for trial.

WHEREFORE, deponent prays that an order may be made herein adjourning this case to the reserve calendar for December 8, 1944, and for such other and further relief as to the Court may seem just and proper.

Subscribed and sworn to before

me this 13th day of November, 1944.

*Harry McGrail*

HARRY McGRAIL, Notary Public  
Queens Co. Clk's No. 1318, Reg. No. 64-Mc-6  
N.Y. Co. Clk's No. 176, Reg. No. 101-Mc-6  
Kings Co. Clk's No. 46, Reg. No. 74-Mc-6  
Bronx Co. Clk's No. 3, Reg. No. 33-Mc-6  
Nassau Co. Clk's No. 8-Mc-46  
Also Westchester, Suffolk  
Richmond Co. Clk's  
Commission Expires March 30, 1946

*Richard Stanton*