

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

JESSICA M. HILL,

Plaintiff,

- against -

E 78 - 350

SAM H. HARRIS, SAM H. HARRIS THEATRICAL
ENTERPRISES INC., IRVING BERLIN and
MOSS HART,

Defendants.

----- X

DEPOSITIONS DE BENE ESSE

JUL 18 1978
J

Mc KERCHER & LINK
ATTORNEYS AT LAW
17 JOHN STREET
NEW YORK

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

----- X
JESSICA M. HILL,

Plaintiff,

-against-

SAM H. HARRIS, SAM H. HARRIS THEATRICAL
ENTERPRISES INC., IRVING BERLIN and
MOSS HART,

Defendants.
----- X

APPEARANCES;

Miss Patty S. Hill
Miss Jessica M. Hill,
Witnesses on behalf of Plaintiff.
McKERCHER & LINK
(Malcolm B. Stark, Esq., of Counsel),
Attorneys for Plaintiff.

OBRIEN, DRISCOLL & RAFTERY,
(Benjamin Pepper, Esq., of Counsel),
Attorneys for Defendant.

The examination of witnesses de bene esse beginning on the 1st day of July, 1935, on behalf of the plaintiff before me, Alfred J. Forsyth, Esq., a Notary Public, for the County of Westchester, my certificate being filed in the County of New York, at my office at 70 Pine Street, City of New York, in the Southern District of New York in a certain suit now pending and undetermined in the District Court of the United States for the Southern

District of New York in the district aforesaid, wherein JESSICA M. HILL is Plaintiff and Sam H. Harris, Sam H. Harris Theatrical Enterprises Inc., Irving Berlin and Moss Hart are defendants.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties herein that all objections except as to form are reserved to the time of trial.

IT IS FURTHER STIPULATED that this testimony may be taken down in shorthand and transcribed by Miss Gertrude Esterhaus.

PATTY S. HILL, produced on behalf of the plaintiff, being first duly sworn, deposes and says as follows:

Q. Miss Hill, are you a citizen of the United States?

A. I am.

Q. And where do you reside?

A. 21 Claremont Avenue, New York City. That is my home address. My professional address is Teachers College, Columbia University.

Q. What is your present occupation?

A. Professor of education, though I am retiring today.

Q. And where are you a professor of educa-

tion?

A. Teachers College, Columbia University.

Q. And how long have you been associated with Columbia University?

A. 1905 and 1906.

Q. That is from 1905 to 1906?

A. I went first for a short series of lectures because I did not want to leave my Louisville work and they called me back again, and it took three times to make me willing to give up my work in Louisville - it was 1905 and 1906 when I came to stay.

Q. And you have been associated with Columbia University since 1905 and 1906.

A. Yes.

Q. What were your educational associations before that time?

A. I was principal of the Training School for Teachers in Louisville, Kentucky.

Q. When was that?

A. From 1887 when I entered the training school and graduated in 1889 and took over the principalship in 1893. And the organization was called the Louisville Free Kindergarten Association.

Q. And how long were you associated there?

A. From 1887, when I entered the training

class until 1905 and 1906, when I finally came here.

Q. Where did you study for your musical education?

A. My sister Mildred, who wrote the music, was the musician, and I was the writer of the words of the songs.

Q. I mean where did you take your musical education itself?

A. Well, what musical education I had -- I did not call myself a musician or a composer.

Q. Did you write the music for the song "Good Morning To All".

A. I wrote the words to the song "Good Morning To All".

Q. Who wrote the music for the song?

A. Mildred J. Hill, my older sister.

Q. When did she write the music?

A. About 1889 or 1890. We were writing songs from 1889 to 1893. Now, just a minute -

Q. Where was it written?

A. Louisville, Kentucky.

Q. Do you recall the address?

A. 1109 Second Street.

Q. Was that your home at that time?

A. That was my home.

Q. And who lived there at the time that Miss Mildred Hill was composer of this song?

A. The whole family with the exception of my father who was dead. All the rest of the family were living there at that time. My mother and five sisters and brothers.

Q. And these five sisters and brothers included Miss Jessica M. Hill?

A. Yes.

Q. Was the tune original with Miss Mildred Hill.

MR. PEPPER: I object to the form of the question.

A. Yes, absolutely.

Q. Will you state the circumstances surrounding the origination of the tune.

A. The songs for children at that time were of two types. One group came over from Germany collected by Froebel himself which were so poor both musically and judged from the standpoint of the ability of the child to sing, that it was necessary to discard them. The ~~second~~^{first} attempt to improve upon that was by a German family by the name of Hailmann, if I remember correctly. They did

not create their songs. They tried to get good music but it was not fitted to the idea and the emotions in the song nor fitted to the musical ability of young children. When my sister Mildred and I began the writing of these songs (referring to "Song Stories for the Kindergarten") we had two motives. One was to provide good music for children. The second was to adapt the music to the little child's limited ability to sing music of a complicated order. Also, we wished the song to express the idea and the emotions embodied in the words and these two things were absolutely new at that time. Now, does that answer all you want to know?

Q. You haven't as yet told us, Miss Hill, the date at which this took place.

A. My memory is a little vague as to the particular year but it was bound to be between 1889 and 1893, when these songs were demanded by the public for publication. We did not write them for publication. We wrote them for the group of children I was teaching and they were so superior to any other music in the market at the time that the public demanded the publication and they were published and put on exhibit in the World's Fair in Chicago in 1893.

Q. Was that the World's Fair in 1893 or 1895?

A. 1893.

Q. How long would you say that you and Miss Mildred Hill worked on the particular song "Good Morning To All" before it was completed.

A. It was one of the earliest of the group and for that reason took longer to work out with the children. It would be written and I would take it into the school the next morning and test it with the little children. If the register was beyond the children we went back home at night and altered it and I would go back the next morning and try it again and again until we secured a song that even the youngest children could learn with perfect ease and while only the words "Good Morning To All" were put in the book we used it for "Good-bye to you", "Happy Journey to You", "Happy Christmas to You" and "Happy New Year to You", "Happy Vacation to You" and so forth and so on.

Q. Did you also use the words "Happy Birthday to You".

A. We certainly did with every birthday celebration in the school.

Q. Did you write the words for this particular tune of "Good Morning To All", Miss Hill?

A. I did.

Q. Had you at that time also written many other verses in conjunction with the words which appear

in the edition of "Song Stories for the Kindergarten", published in 1893.

A. Yes, we were writing them practically every day.

Q. Now, Miss Hill, did you write the words before the music was written for the particular song?

MR. PEPPER: I object to the form of the question.

A. I did. I was at work with the children. I was a teacher. My sister was a composer and a musician. I would write the words of the song and then, we would go home and sit down together and work out the music that fitted the needs of little children.

Q. And with particular reference to the song "Good Morning To All", after you had written the words did you work on the music with your sister?

A. Yes.

Q. And is this a copy of the music as you finally prepared it for the particular song "Good Morning To All"?

A. Yes, this is the final form (referring to "Song Stories for the Kindergarten", published in 1893).

MR. STARK: I ask that this book "Song Stories for the Kindergarten" be marked Exhibit "A" for

identification.

Q. And during the time that this particular song was being written, did you use the various lyrics in conjunction with the tune while you were working with the children?

MR. PEPPER: I object to the form of question.

A. We certainly did.

Q. Miss Hill, did these defendants or any of them ever request or procure your consent to the public rendition of the tune "Good Morning To All" in a production known as "As Thousands Cheer"?

A. Never.

Q. Did you ever ratify or consent to such rendition by the defendants or any of them?

A. I did not.

Q. Do you receive royalties for the public presentation of your copyrighted song from the defendants or any of them?

A. I did not.

Q. Do you receive royalties for the public presentation of your copyrighted song from others than the defendants?

MR. PEPPER: I most certainly object to that question as not coming within the scope of this examination.

A A. I have not personally received it. I can not speak for the publishers.

Q. Miss Hill, when you were working on the manuscript with your sister Mildred and you would suggest to her that an interval was not particularly apt for the children, would she then work out another interval on the piano and present it to you for your O.K.?

A. She did, to be followed by trying the revision with the children the next morning.

Q. And then, you would go back if it was not particularly good and do the same thing over again?

A. Yes.

Q. And your sister Mildred wrote the music on the manuscript as she went along?

A. Yes, she did.

Q. And the final manuscript as you prepared it is the music that appears in this exhibit (referring to the new edition, revised, illustrated and enlarged "Song Stories for the Kindergarten", Renewal Registration No. 25771).

MR. PEPPER: I object to the form of the last question.

A. Yes.

CROSS EXAMINATION BY MR. PEPPER:

Q. Miss Hill, you were asked before where your sister Mildred received her education. I do not think you answered the question. Would you tell us now?

A. My sister Mildred? She received her musical education first in my father's own school, which was one of the early educational efforts for advanced education for women ^{near} ~~at~~ Louisville, Kentucky. The name of the institution was Belwood Seminary, just outside of Louisville, Ky., in a little place called Anchorage, Ky. Her teacher was the professor of the Department of Music in my father's college and his name was Kohnhorst. Later, she studied with various musical institutions, particularly with two outstanding leaders in music in Chicago, Illinois, one was Calvin Cady, and the other Mr. William Tomlins, who had charge of the music chorus of the children in the World's Fair in Chicago in 1893. She received her diploma from there. . . And the other many places where she studied harmony and counterpoint are too varied for me to give here but those two were the outstanding teachers that she had.

Q. Then, Mildred Hill was your sister, was she not?

A. My older sister.

Q. And what is the relation between Mil-

dred Hill, yourself and Jessica M. Hill?

A. Sisters.

Q. Also a sister?

A. Yes.

Q. When this song that we will refer to as "Good Morning to All" was written, it is your testimony that it was written some time between 1889 and 1893 and, as I understand it, you wrote the words first.

A. I wrote the words first.

Q. And those words were:

"Good Morning to You,
Good Morning to You,
Good Morning Dear Teacher,
Good Morning to All."

A. Yes.

Q. And, having written those words, you requested your sister Mildred to devise some kind of correct tune to go with these songs, is that right?

A. To express those words and emotions and ideas fitted to the limited musical ability of a young child.

Q. And she did write something after that, is that right?

A. Yes.

Q. And it was tried out in the classroom?

A. Yes.

Q. And we believe that you testified that you made some contribution to the revision of that music?

A. To the what?

Q. Revision of the music.

A. Out of my experience with the children, if the register was too complex or too great for the young child, then, we went back at night and revised and experimented, and revised and experimented.

Q. And that went on for a considerable length of time?

A. Yes.

Q. So that the final work that resulted was the product of your combined efforts?

A. Yes, it was.

Q. And, it would not be unfair, would it, to say that your experience with the children contributed as much to the final tune that was available as your sister's musical training?

A. Yes, though she was the musician and I, if it is not using too pretentious a word, was the poetess.

Q. And what has been your field at Teachers College, Miss Hill?

A. I have been serving as Director of the

Nursery School Kindergarten and First Grade Education since I think about 1908, when I was made director.

Q. I believe you have the title of professor?

A. Yes, and now, I am retiring. This morning I retired with the emeritus, which has only been given to a very few men ^{or women} connected with the college.

Q. Now, did your song "Good Morning To All" achieve any popularity in this country?

MR. STARK: I object to the form of the question.

A. It did. The whole book did, because of its simplicity as compared with preceding efforts for songs for children.

Q. Well, now, did it obtain any extensive popularity - that particular song?

A. Yes, because it was one of the simplest.

Q. And has it been sung very much in this country?

A. All over the country.

Q. Were you as one of the joint authors interested in noting its popularity?

MR. STARK: I object to the form of the question.

A. Well, I was never a money grabber. I

was more interested in education than I was in the money side of the thing but I was interested insofar as it absolutely met little children's needs and was used universally and pedagogically.

Q. I am sure you were. And it came to be sung practically in all kindergartens?

A. Absolutely.

Q. And the children of the past thirty years, shall we say, who have grown up have been singing "Good Morning to All" ever since the book was written?

A. Yes.

Q. And it has also been sung by others than children, Miss Hill?

A. Well, always in our teachers' conferences, or if we had a dinner, and at teachers' festivities it was sung by the adults even if the children were not present.

Q. And has it ever come to your attention in the past thirty years where it was sung at some, shall we say, some celebrations, municipal celebrations, or any other kinds of celebrations?

A. At our teachers' conferences, yes.

Q. No, but I mean at others.

A. I don't think I ever heard it sung myself except when I heard it sung in "As Thousands Cheer". I would read in the newspaper that on President Roosevelt's

Birthday it was sung, and I know it has been sung at dinners for adults, but I never heard it personally sung that I can remember for anything except educational conferences except when I heard it sung -

Q. Irrespective of whether you had heard it personally or not, did you know that it was being sung generally at various kinds of celebrations?

MR. STARK: I object to the form of the question.

A. I knew it was being sung but I did not consider it my own affair. I expected the publisher to look after that end of it.

A. And you knew that it was being sung just as extensively before 1921 as it has been since?

MR. STARK: I object to the question.

A. I don't think it was sung except with children and at educational conferences until after that date.

Q. Until after what date?

A. Until 1921. I don't know why but I know that after all large conferences of teachers as we broke up the meeting we would sing "Good ^{Bye} ~~Time~~ to You".

Q. Well, has the song achieved any greater popularity since 1921 than it had prior to 1921?

A. Outside of education I think that is true.

As far as use with children and teachers was concerned, no; always popular with the children and the teachers.

Q. Do you know of any occasion prior to 1921 at which the song with any variation of words was sung, any kind of festivity, celebration, for entrance to which an admission charge was made?

A. That is a question I can not answer; I do not know.

Q. Did you know that prior to 1921 your song had been published in many song books?

MR. STARK: I object to the form of that question.

A. As nearly as I can answer that, I go back to the statement that I was much more interested in the education than I was in any use that would be made of my song and for that reason if a publisher would write me and say that somebody wished to use this song in China or Japan and said he was willing if credit was given at the bottom of the page for the publishers and authors, I was more than willing.

Q. Well, is it true, Miss Hill, that this song "Good Morning to All" was published in song books for children by various publishers, crediting you and your sister as the author and composer without any permission and without any correspondence with you, or your

publishers?

MR. STARK: I object to the form of the question.

A. Now, that I can not answer. It would naturally only come to me when they asked permission, which I readily granted.

Q. You, as a person interested in the education of children - you were interested in the education of young children, I assume - did you make it your business to be familiar with song books published for young children?

A. Yes, especially those in this country.

Q. And did you state that you did not find song books published by publishers other than by Clayton F. Summy & Company which contained this song, "Good Morning to All"? Well, let me ask it more simply: Did you or did you not come across song books published by publishers other than by Clayton F. Summy which contained the song "Good Morning to All"?

A. With my permission, no - I should think you would have to refer that to the publishers because they kept a very close track on it personally so that I can't tell you that.

Q. And the fact of the matter is that you were not interested in that?

A. I was not interested in anything except the real welfare of children educationally. That was my main delight.

Q. And you were pleased so to see and know that your song was being used?

A. With the children, yes, and at teachers' conferences. But, otherwise, I did not know anything of it.

Q. And you were entirely willing that it should be used as extensively as possible with children?

A. In training only with permission and for educational use, yes - where the children were simply singing it.

Q. My question is that you were pleased that it should be used as extensively as possible with the children.

A. With the children, yes.

Q. Did your sister Jessica M. Hill participate in the writing of this song?

A. She would often be present when it was being revised, but she was much younger than my sister Mildred and myself and though she was a singer at the time she was not either a teacher or a composer and could only enter into the general interest of the family in improving music for young children.

Q. Prior to 1893 had these songs that you wrote been reduced to writing, Miss Hill?

A. In manuscript, yes.

Q. Manuscript form?

A. Yes.

Q. Now, at that time, between 1887 and 1893, you were principal of some school?

A. In 1887 I entered the training class and I became director of that same school immediately after my graduation in 1889. Then I became principal of the whole training school in 1893.

Q. Now, this was a school in which at least one department was devoted to the training of young ladies to become kindergartners, and this song was one of the songs that was used in connection with the training of kindergartners?

A. Yes.

Q. And this song was taught to the young ladies in training.

A. Yes.

Q. How was it taught to them.

A. Verbally and by note, both.

Q. Were they furnished with any copies of it?

A. No. They could only get it verbally

until it was published in 1893.

Q. What did you expect them to do with it after you had taught it to them?

MR. STARK: I object to the form of the question.

A. Why, I expected them to use it for educational purposes with young children.

Q. You anticipated that they would do that, didn't you?

A. I did.

Q. And, in fact, didn't you intend that they should do that? Teach it to other children in their other classes?

A. I wrote it for that purpose - for the use of young children of the kindergarten age level.

Q. Now, these young ladies whom you were training - when they graduated went out to different schools, didn't they?

A. Yes, but by that time the book had been published.

Q. Well, now, you became director of this particular department in 1889.

A. 1889.

Q. I think that this was one of the first songs that you wrote, and it was a two year course?

A. It was a fifteen months course and then it became a two year course.

Q. So that some of these young ladies were leaving the school about 1891, weren't they?

A. Yes.

Q. And they knew the song?

A. Yes.

Q. And it was your expectation and intention that they should teach it to the children in the schools where they became teachers?

A. It was my expectation, yes. It was written to help to do a piece of educational work.

Q. About how many teachers in training for kindergarten work would you say graduated from this school between 1889 and prior to the fall of 1893?

A. The training classes were very small.

Q. Yes, I would imagine so.

A. I was a member of a class of six. And the class^s did not become large until after the World's Fair. An educational exhibit which was made at the World's Fair made that training school quite famous. The classes were very small - I doubt if we ever had more than ten or twelve. That could be looked up, but I don't -

Q. Well, would you say that before the fall of 1893, not more than fifty, probably thirty-five?

A. As nearly as I can remember.

Q. Now, these young ladies who graduated from the school, did they go out and become kindergartners?

A. Yes.

Q. When you taught them this song in your class you taught it as one of the songs that you had devised particularly excellent for the use of children, is that right?

A. Yes.

Q. What restrictions did you place upon its use when you taught them?

MR. STARK: I object to the form of that question.

A. They did not possess the manuscript.

Q. Well, they knew that?

A. They knew they had to depend on their own ear for the use of it.

Q. Of course, it is not a tune which is difficult to remember.

A. No, not at all.

Q. But they then thought there was no restriction placed upon their use?

MR. STARK: I object to the form of the question.

A. Provided it was with children and teach-

ers.

Q. Well, now, Miss Hill, I just want to be sure that we get the answers to my questions, and I want to know whether you had in the course of your teaching actually said to any of your young ladies there, "Now this song is to be used only with children"?

MR. STARK: I object to the form of the question.

A. They were told specifically that it must never appear in print, that the book would be published and that they could not even from memory write it down and publish it. It was purely a matter of their musical memory.

Q. They had the unrestricted right to teach it, didn't they?

MR. STARK: I object to the form of the question.

A. It is hard to answer that because we were not trying to protect ourselves in any way except as to publication at that time.

REDIRECT EXAMINATION BY MR. STARK:

Q. Miss Hill, on or about January 3, 1927, did you, through your publisher, Clayton F. Summy Company, file a renewal registration for copyright re-

gistration No. 20441 with the Register of Copyrights, Washington, D.C., under Renewal No. 36618 for the work described as a book entitled "Song Stores for the Sunday School"?

A. I did, as far as I remember that is my memory.

Q. And are you now the owner of that copyright?

A. Yes.

MR. STARK: I will ask that this registration certificate certified by the Congressional Library of America be marked Exhibit "B" for identification.

MR. STARK: I will ask that the copy of song book entitled "Song Stories for the Sunday School" be marked Exhibit "C" for identification.

Q. Miss Hill: Who actually transcribed onto the manuscript the music for the particular song "Good Morning to All" as it was written?

A. My sister Mildred J. Hill.

Q. Do you know where the manuscript is?

A. I do not, for the simple reason that when my old home was broken up, when my two sisters died, June and September 1916, we destroyed untold numbers of manuscripts, letters and papers.

Q. Miss Hill: Did you see the show called "As Thousands Cheer"?

A. I saw the last matinee performance in New York.

Q. And is this a program of that particular show?

A. Yes, it is.

MR. STARK: I ask that this program be marked Exhibit "D" for identification.

Q. Do you recall in that performance a certain skit which was called on the program "World's Wealthiest Man Celebrates Ninety-Fifth Birthday"?

A. I do.

Q. Do you remember the date on which you saw and heard the performance?

A. I can't give you the exact date but I know it was closing in New York that night and I went to the matinee performance that afternoon.

Q. Do you remember the month?

A. I do not.

Q. With reference to this particular skit I have just referred to, did you hear any songs sung during the performance of that skit?

A. I did.

Q. At what part of the skit was it sung?

A. It was sung when the little model of Radio City was presented to the person impersonating John D. Rockefeller the elder.

Q. Did you recognize the song that was sung?

A. I certainly did.

Q. Do you remember the words that were sung from the stage at that time?

A. The "Happy Birthday to You", etc., were the words.

Q. Did you recognize the tune?

A. I certainly did.

Q. Will you tell us what the tune and the music was that was sung from the stage.

A. It was the music as it appears in this song book (referring to Exhibit "A" for identification).

Q. And was that music as sung from the stage exactly the same in tune as the song which was originally written by Miss Mildred J. Hall?

A. It was.

Q. And as published in that particular Exhibit "A" for identification?

A. It was.

Q. Did you buy a ticket in order to view the performance.

A. I did.

Walter S. Hill

Sworn to before me this 16th day

of July, 1935.

Alfred S. Forsyth

APP

start

Rec

ALFRED S. FORSYTH
NOTARY PUBLIC, Westchester County
N. Y. Co. Clk's No. 248 Reg. No. 6 F484
Term expires March 30, 1936



Miss JESSICA M. HILL, a witness produced on behalf of the plaintiff, being first duly sworn, deposes and says as follows:

Q. Miss Hill, are you the plaintiff in this action?

A. I am.

Q. Are you a citizen of the United States?

A. Yes.

Q. Where do you reside?

A. 21 Claremont Avenue, New York City.

Q. Do you reside with your sister Miss Patty S. Hill?

A. I do.

Q. What is your present occupation?

A. I have just ~~been~~ retired from Teachers College, Columbia University, one year, retiring last June.

Q. And for how long had you been associated with Columbia University?

A. I had been teaching there since 1912, and a student there for about three years before that.

Q. What subject did you teach?

A. I taught English literature and composition.

Q. Were you associated with any other educational institutions as a teacher or professor prior to the time that you so became associated with Columbia University.

A. No, that was my first teaching, first professional work.

Q. Where were you living during the years of 1889 to 1893?

A. At 1109 Second Street, Louisville, Ky.

Q. And in the same house with you were your two sisters Mildred J. Hill and Patty S. Hill?

A. Yes.

Q. And other members of your family?

A. Yes.

Q. Do you recall at that time seeing and hearing your sister Mildred J. Hill working on music for children.

A. Very distinctly.

Q. Do you recall in particular the song "Good Morning to All"?

A. I do.

Q. Will you state the circumstances as far as you can remember surrounding the origination of that tune?

A. Yes. Now, you must remember I was only fifteen at the time, fourteen or fifteen, and that I

was not interested in education and that therefore I had no connection with it whatever except as a sister who was immensely interested in the success of her two sisters in writing a book. I remember very distinctly that this particular song had a great deal of attention. They wanted to make it so simple that the smallest children could learn it and learn it rather quickly and they wanted to make it express this greeting, this courteous greeting just as clearly as they could for small children, and a great deal of work was to be done with that song, often I being present not in an advisory capacity but unofficially standing at the piano and singing it to see if it was a good simple song for small children.

Q. Did you sing many lyrics to the tune?

A. I remember particularly "Good Morning To All" And I remember "Happy Birthday to ^{You} ~~Ma~~". These are the two that impressed me most. I may have sung, you know, these others, but those are the two that I remember.

Q. Will you describe to us if you remember any one of the incidents during which you saw your two sisters working on this particular song.

A. I saw it so often, Mr. Stark, it was so often worked over to make it simple enough. It would have been easy to make it complex but to get it down so

simply that little bits of children could learn it caused a good deal of work on it.

Q. Well, will you describe to us one particular incident or one particular hour of work during which your two sisters were at work, that is, tell us what Miss Mildred Hill did and what Miss Patty Hill did.

A. Well, my sister would be at the piano playing it and my sister Patty would often say to her that the children did not sing that interval well. I can remember that. Naturally, I don't remember any one hour because I was fifteen and that is, how many years ago? You can tell how far back, about forty-one or forty-two years. Well, naturally, I was a youngster. I was not interested in the educational aspect but I was immensely interested that my two sisters were writing songs. That was a tremendous event to me.

Q. Well, when Miss Patty Hill would tell your sister Mildred that a particular interval was not particularly apt for the children, what would Miss Mildred then do?

A. She would write ~~back~~^{out} the notes in an even simpler fashion and they would try it right then and pass upon it as to whether that was a more childlike thing - the whole thing was to get it childlike.

Q. Will you tell us what is an interval?

A. From a to b, b to c, c to d, e to f, f to g, referring to the notes on the musical scale, not to the letters of the alphabet).

Q. On or about September 3, 1921, did you through Clayton F. Summy Company file a renewal registration for a copyright No. 5997 with the Register of Copyrights, Washington, D.C. under Renewal No. 19043?

A. Yes, I remember signing it.

Q. Are you now the owner of that copyright?

A. I am.

MR. STARK: I ask that this renewal registration for a copyright No. 5997 with the Register of Copyrights, Washington D.C. under Renewal No. 19043 be marked Exhibit "E" for identification.

Q. On or about the 9th day of January, 1924, did you through Clayton F. Summy Company file a renewal registration for Copyright No. 34260 with the Register of Copyrights, Washington, D.C., under Renewal No. 25771?

A. I remember signing it.

Q. Are you now the owner of said copyright?

A. Yes.

MR. STARK: I ask that this renewal registration for Copyright No. 34260 with the Register of Copyrights, Washington, D.C., under Renewal No. 25771, be marked Exhibit "F" for identification.

Q. Did the defendants or any of them request or procure your consent to the public rendition of the tune "Good Morning to All" in the production "As Thousands Cheer"?

A. No.

MR. PEPPER: Mr. Stark, isn't that covered by the pleadings?

MR. STARK: No it is not.

Q. Did you ever ratify or consent to such rendition by the defendants or any of them.

A. No.

Q. Do you receive royalties for the public presentation of your copyrighted song from the defendants or any of them?

A. No.

Q. Do you receive royalties for the public presentation of your copyrighted song from others than the defendants?

A. You mean that particular song? I receive royalties regularly from my sister's songs for adults. They are popular and I receive royalties from those adult songs from the publishers.

Q. Do your publishers receive royalties for the public presentation of this copyright?

MR. PEPPER: I object to the form of the question.

A. I don't know.

Q. Did you see the show "As Thousand Cheer"?

A. No, I did not. I don't know whether I should say this or not, but I really would like to say I would not go to see it because I knew that my sister Mildred had written that in such good faith to be sung by small children in educational institutions and I did not want to see it sung in this connection and I had been told that it was being sung, and when my sister went, I refused to go with her.

CROSS EXAMINATION BY MR. PEPPER:

Q. You described before, Miss Hill, how your sister Mildred and your sister Patty were working on this song that we were calling "Good Morning to All". Miss Patty would comment upon the interval that was not quite right and they would then together sit down and work out a new interval?

A. Yes, may I add to that, that my sister Mildred often went into the kindergarten and heard the children sing it, using her own judgment.

Q. Yes, but what I am asking you, Miss Hill,

is that you saw both sisters sitting, or one sitting and one standing at the piano together working and reworking on the chords, is that correct?

A. I did - for simplicity.

Q. And you are prepared to state are you not that this melody was the combined work of both sisters?

A. In this sense, that my sister Patty wrote the words, my sister Mildred wrote the music, and that they worked together on it in trying to get it suited for the voices of children.

Q. Well, what I am trying to get is a simple answer to my question. It is a fact then that this melody that we are talking about is the combined product of the efforts of Miss Mildred Hill and Miss Patty Hill?

MR. STARK: I object to the form of the question on the ground that it has already been answered.

A. It is.

Q. Isn't it also a fact, Miss Hill, that a song "Happy Birthday to you" has for many years been sung generally at all birthday celebrations?

MR. STARK; I object to the form of the question.

A. I have no way of knowing.

Q. Haven't you heard it frequently sung?

A. In kindergartens, yes, but, as I was not a kindergartner I did not hear it sung at the conventions and conferences at which my sister attended and at which she did hear it. I have heard it sung in kindergartens, often.

Q. Did your sister Mildred Hill leave a will?

MR. STARK: I object to the form of the question and as not coming within the scope of this particular examination.

A. My brother Wallace attended to all that and I can not remember as he took care of everything.

Q. Your sister died in 1917?

A. 1916.

Q. What month?

A. June 5, 1916, that is, Mildred.

Q. And where did she die?

A. In Chicago, at the home of my brother Wallace.

Q. Do you know in what manner or legal form her property was disposed of?

MR. STARK: I object to the form of the question, and further, it does not come within the scope of this examination.

A. I do not because my brother Wallace attended to everything until just before his death.

Q. Do you recall the address of your brother Wallace in Chicago at the time of your sister Mildred's death?

MR. STARK: I object to the form of the question.

A. I can tell you his business address because that is where I wrote.

Q. Did you know his residence address?

A. Yes, but it has slipped my memory. I have to - 2931 Calumet Avenue, Chicago. But I always wrote to his office. I can give you that number.

Q. And his business address?

A. 105 So. LaSalle Street, Hill, Joiner & Company. That is where I always wrote.

Q. And were these addresses the same at the time of his death.

A. Yes.

Q. And when did he die?

A. He died in 1923, April 5th.

.....

MR. STARK: I will ask that a copy of the new edition, revised, illustrated and enlarged "Song

Stories for the Kindergarten", referred to as Renewal
Registration No. 25771 be marked Exhibit "G" for
identification.

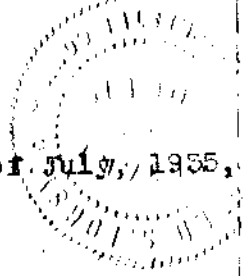
Jessica M. Hill

Sworn to and subscribed before me this 16th day
of July, 1935.

Read

Alfred S. Forsyth

ALFRED S. FORSYTH
NOTARY PUBLIC, Westchester County
N. Y. Co. CH's. No. 648 Reg. No. 6F484
Term expires March 30, 1936



ADJOURNMENT taken to the 16th day of July, 1935,
at 10:30 A.M.

STATE OF NEW YORK
COUNTY OF NEW YORK

SS:

I, Alfred J. Forsyth, a Notary Public, in and for the County of Westchester, State of New York, my certificate being filed in New York County, duly commissioned and qualified and authorized to administer oaths, and to take and certify depositions, do hereby certify that pursuant to the notice dated June 17, 1935, issued and served in the civil cause depending in the District Court of the United States for the Southern District of New York, wherein Jessica M. Hill is plaintiff, and Sam H. Harris, Sam H. Harris Theatrical Enterprises Inc., Irving Berlin and Moss Hart, are defendants, I was attended at my office, No. 70 Pine Street, in New York City, by McKercher & Link (Malcolm B. Stark, Esq., of Counsel), attorneys for said plaintiff, and also by O'Brien, Driscoll & Raftery (Benjamin Pepper, Esq., of Counsel), Attorneys for Defendants Sam H. Harris and Sam H. Harris Theatrical Enterprises, Inc., on the said days and dates hereinbefore stated: that the aforementioned witnesses Patty S. Hill and Jessica M. Hill, who were of sound mind and lawful age and were by me first carefully examined and cautioned and duly sworn, did testify the truth, the whole truth, and nothing but the truth; and they thereupon testified as is above shown and that the depositions both subscribed as above set forth were reduced to writing by Miss Gertrude Esterhaus in the presence of the witnesses themselves and from the statements of them, and were subscribed by the said witnesses in my presence, and were taken at the place in the aforesaid notice specified and at the times as set forth, adjournments being had or taken from day to day as provided for in said notice, and that all was so done, written and signed in the presence of said counsel for said plaintiff and defendants.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that both of the deponents live in New York City and are ancient and infirm. That I am neither of Counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause, and that it being impracticable for me to deliver said depositions with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up and directed with my own hand and speedily and safely

transmitted to the said court for which it was taken, and to remain under my seal until they are opened.

As witness my hand and seal as such Examiner at New York City on this 16th day of July, 1935.

(Handwritten mark)

APF Alfred S. Forsyth (L.S.)
(Handwritten signature)

ALFRED S. FORSYTH
NOTARY PUBLIC, Westchester County
N. Y. Co. Clk's No. 848 Reg. No. 6 F 494
Term expires March 30, 1936