

Bright Tunes Music v. Harrisongs Music 420 F. Supp. 177 (S.D.N.Y. 1976)

Complaining Work	Defending Work
Ronald Mack	George Harrison
"He's So Fine"	"My Sweet Lord"
Hear Sound Recording	Hear Sound Recording
View Partial Score	View Partial Score
Hear Melody Only	Hear Melody Only

Superimposition of Melodies

Hear Sound Recording

Comment

This case found the late George Harrison liable for copyright infringement; given Harrison's popularity as one of the Beatles, it is probably the most commonly known music plagiarism dispute. The court's tone is almost apologetic in determining that Harrison's use of the melodic kernels of plaintiff's universally popular number, in the same order and repetitive sequence and set to "identical harmonies," compelled it to conclude that Harrison unconsciously misappropriated the musical essence of "He's So Fine."

The court made much of the fact that both songs have a distinctive "grace note" in the same melodic motive. Harrison's use of this idiosyncratic musical device, along the lines of the court's reasoning, implicated him; it was akin to copying a mistake. The opinion's footnote four contains the motive with the grace note and elsewhere acknowledges that the recording and sheet music Harrison ultimately released of the song (after an earlier recording by Billy Preston) do not incorporate the supposedly telltale grace note. A minor point, but what the court refers to as a "grace note" is an *appoggiatura* in "He's So Fine" (and doesn't affect the rhythmic value of any other note in the measure in which it occurs). The harmonies are not "identical;" both songs contain a good bit of II - V alternation (one of the commonest progressions in tonal harmony) but Harrison's chords are triads rather than the seventh chords of "He's So Fine" and Harrison's second motive plays over alternating I and VI chords whereas that of "He's So Fine" remains on I.

The opinion's factual findings are essentially accurate, but did the court ask the right questions to arrive at its finding of unconscious copying? The musically illiterate Harrison didn't create the score of "My Sweet Lord," a standard melodic analysis of which led the court to its decision. Harrison hired an educated musician to work a couple of banal melodic ideas set to two chords into a marketable visual representation of the song's real locus of economic value: Harrison's quasi-improvisational recorded performance that was entirely responsible for the popularity of this number. The opinion (footnote nine) alludes to Harrison's belief that his song is that which he sings at a particular moment and not something that can be captured on a sheet of paper. The court gave this insight short shrift in its analysis and ultimate determination of misappropriation.

Had the court acknowledged that since the advent of rock music (and an attendant decline in musical literacy and in the musical complexity in the conception of popular works) the commercial value of a song like "My Sweet Lord" or "He's So Fine" depends far more on a specific performance of it than on rudimentary musical elements reduced to notation, it might have reached a less speculative conclusion. Consider the sound recording for these two works on this web site. Unlike Tin Pan Alley numbers from earlier in the century, in which the raw musical data in the audio files suggest fungible works not entirely dependant upon particular performers (see this web site, for instance, "Dardanella" and "Ka-lu-a" from *Fred Fisher v. Dillingham*, 1924) the MIDI files for "My Sweet Lord" and "He's So Fine" are so static because the musical elements are limited and repetitive and the works come alive only in the hands of a specific performer.

The late Harold Barlow, known among music librarians for publishing indexes of themes of major instrumental and vocal works (which raise interesting scope-of-copyright issues themselves) testified for George Harrison.