

1940

## M. E. Hamilton v. Salt Lake City : Abstract of Record

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Draper, Boyden & Draper; Attorneys for Plaintiff and Appellant;

---

### Recommended Citation

Abstract of Record, *Hamilton v. Salt Lake City*, No. 6215 (Utah Supreme Court, 1940).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/591](https://digitalcommons.law.byu.edu/uofu_sc1/591)

This Abstract of Record is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT OF THE  
STATE OF UTAH

E. HAMILTON,

Appellant,

-vs-

SALT LAKE CITY, a  
legal corporation,

Respondent.

No. 6215

from the District Court of the Third Judicial  
Circuit and for Salt Lake County, State of Utah  
Hon. E. J. Bronson, Judge

ABSTRACT OF RECORD

DRAPER, BOYDEN & DRAPER  
Attorneys for Plaintiff and  
Appellant  
1122 Continental Bank Bldg.  
Salt Lake City, Utah

FILED

a true copy of the within Abstract of Record  
this 1st day of January, 1940.

CLERK SUPREME COURT UTAH

HARRIS, CHRISTENSEN & IRVINE

Attorneys for Respondent and

Respondent

	<u>Page</u>
Answer.....	7
Appeal, Notice of.....	27
Assignment of Errors.....	29
Bill of Exceptions.....	8-24
Certificates:	
Clerk's, re transcript of record..	28
Reporter's, re transcript of proceedings.....	22
Claim of Plaintiff, see Exhibit "A"	
Clerk's Certificate, see Certificates	
Complaint.....	1
Decision of the Court (from the Bench)	21
Demurrer.....	5
Directed verdict granted.....	21
Errors, Assignment of.....	29
Exhibit "A":	
Admitted in evidence.....	21
Copy of Exhibit.....	25
Offered in evidence.....	11
Judgment on Verdict.....	26
Motion for directed verdict.....	19
Notice of Appeal.....	27
Notice that Demurrer was overruled...	7
Orders:	
Overruling Demurrer.....	6
Settling Bill of Exceptions.....	23
Taking Demurrer under advisement..	6
Reporter's certificate, see Certi- ficates	
Ruling of the Court on Motion for directed verdict.....	21
Stipulation re settlement of Bill of Exceptions.....	23
Stipulation re testimony of City Clerk or Recorder.....	19
Testimony of Witnesses, see Witnesses	
Transcript of proceedings.....	8-22
Verdict.....	25
Verdict directed.....	21, 22
Witnesses:	
Mrs. M. E. Hamilton (plaintiff)..	9-16
William Perry Sturges.....	16-18
City Clerk or Recorder.....	19
Written Claim, see Exhibit "A"	

---

MRS. M. E. HAMILTON,

Appellant,

-vs-

SALT LAKE CITY, a  
municipal corporation,

Respondent.

No. 6215

---

Appeal from the District Court  
of the Third Judicial District  
in and for Salt Lake County  
State of Utah  
Hon. M. J. Bronson, Judge

---

ABSTRACT OF RECORD

---

(Title of Court and Cause):

I.

COMPLAINT

Comes now the above named plaintiff and  
complains of the defendant and for her cause  
of action alleges:

I.

That the plaintiff at all times herein

Mr. mentioned was and now is a resident of the City and County of Salt Lake, State of Utah.

## II.

That the defendant Salt Lake City at all times herein mentioned was and now is a municipal corporation organized and existing under and by virtue of the laws of the State of Utah.

## III.

That at all times herein mentioned there existed within the city limits of said defendant Salt Lake City a certain public highway known as Second South Street and that in and upon the public sidewalk constituting a part of said highway upon the south side thereof, at a point immediately west of that place known as No. 114 East Second South, there existed a certain hole or cavity endangering and constituting a hazard to the safety of persons passing along and upon said sidewalk.

## IV.

That it was the duty of the defendant to exercise reasonable care to maintain its public sidewalks in a reasonably safe condition and to guard against injury to persons and property

by removing, repairing or making reasonably safe any obstructions, hazards or dangerous places in or upon said sidewalks, and that it was the duty of said defendant to exercise reasonable diligence to discover and repair the aforesaid hole or cavity constituting such obstruction, hazard or dangerous place and to make said sidewalks reasonably safe for travel of persons lawfully in and upon said sidewalk, but that notwithstanding its duty as aforesaid, the defendant negligently and carelessly permitted said hole or cavity to remain open and unrepaired and in a dangerous condition in and upon said sidewalk.

V.

That on or about the 23rd day of March, 1938, plaintiff was lawfully proceeding upon and along said public sidewalk, and that at said time and place, without fault on her part, said plaintiff stepped and fell into said hole or cavity and by means thereof was thrown to and upon the pavement with great force and violence.



VI.

That by reason of said neglect and carelessness of the defendant, and as a proximate result thereof, the plaintiff suffered great physical pain and nervous shock and now does and always will continue to suffer said physical pain, and the bones of plaintiff's right leg were broken and fractured and the flesh and tissues thereof were bruised, traumatized and contused thereby permanently impairing plaintiff's health, strength and activity, all to the plaintiff's damage in the sum of \$2500.00.

VII.

That pursuant to Section 15-7-76, Revised Statutes of Utah, 1933, and within 30 days after the happening of said injury to the plaintiff on, to wit, the 13th day of April, 1938, plaintiff presented to the Board of City Commissioners of said defendant her claim for damages in the sum of \$500.00, and that said Board of City Commissioners did not, within 90 days thereafter audit and allow the same.

VIII.

That upon the said 13th day of April, 1938,

it was impossible to foresee or determine that plaintiff's damages suffered as a result of the neglect and carelessness of the defendant, as aforesaid, would exceed the sum of \$500.00, but that since said date plaintiff has continued to suffer great physical pain and has failed to recover from the disability caused by said injuries, as more particularly set forth hereinabove, and that by reason thereof the plaintiff has suffered damages in the sum of \$2500.00

WHEREFORE, plaintiff prays judgment against the defendant for the sum of \$2500.00, for the costs of this action, and for such other and further relief as to the court may seem fair and just.

DRAPER, BOYDEN & DRAPER

(Signed) COURTNEY R. DRAPER  
Attorneys for Plaintiff

(Duly verified).

(Filed March 17, 1939).

(Title of Court and Cause):

DEMURRER

Come now the defendant above named and



r. demurs to plaintiff's complaint on file here-  
in upon the ground and for the reason that  
said complaint does not state facts sufficient  
to constitute a cause of action against said  
defendant.

HARRIS, CHRISTENSEN & IRVINE  
Attorneys for Defendant.

(Acknowledgment of service).

(Certificate of counsel).

(Filed April 5, 1939).

(Title of Court and Cause):

ORDER

Defendant's Demurrer to Plaintiff's Com-  
8 plaint comes now on for hearing. The matter  
is submitted by counsel for the plaintiff and  
said demurrer is by the Court taken under  
advisement.

(Entered on minutes).

(Dated April 17, 1939).

(Allen G. Thurman, Judge).

(Title of Court and Cause):

ORDER

The Court having heretofore taken under  
9 advisement the matter of its decision upon

r. defendant's demurrer to plaintiff's complaint  
now orders that said demurrer be overruled  
and that defendant be given ten days after  
notice to answer.

(Entered on minutes).

(Dated April 22, 1939).

(Allen G. Thurman, Judge).

(Title of Court and Cause):

#### NOTICE

That demurrer was overruled and defendant  
10 given ten days after notice in which to answer.

(Acknowledgment of service, April 25,  
1939).

(Filed April 25, 1939).

(Title of Court and Cause):

#### ANSWER ~~for~~

Comes now the defendant and in answering  
12 plaintiff's complaint admits, denies and  
alleges as follows:

1. Admits paragraphs 1 and 2 of plain-  
tiff's complaint.

2. Answering paragraph 3, defendant  
admits that there existed within the city  
limits a public highway known as Second South

r. Street, and denies each and every other allegation of paragraph 3.

3. Denies paragraphs 4, 5, 6, 7 and 8 of plaintiff's complaint.

Further answering plaintiff's complaint defendant alleges that if the plaintiff was injured at the time and place claimed by her it was because of her own carelessness and negligence and that her own carelessness and negligence was the proximate cause of any injury sustained by her.

WHEREFORE, defendant prays that plaintiff take nothing and for its costs herein incurred.

HARRIS, CHRISTENSEN & IRVINE  
Attorneys for Defendant.

(Duly verified).

(Acknowledgment of service).

(Filed May 4, 1939).

#### BILL OF EXCEPTIONS

(Title of Court and Cause):

#### TRANSCRIPT OF PROCEEDINGS

On Monday, the 11th day of September, 1939,

25 at the hour of 10 o'clock A.M., this cause

r. M. J. Bronson, Judge, sitting with a jury. Courtney R. Draper, Esq. appeared for the plaintiff and Gerald Irvine, Esq. appeared for the defendant. A jury of eight members was duly chosen and sworn. Whereupon the following proceedings were had;

DIRECT EXAMINATION OF THE PLAINTIFF

BY MR. DRAPER

My name is Mrs. M. E. Hamilton, I reside at  
26 145 South 3rd East and I am the plaintiff in  
this case. On March 23, 1938, at 9:30 A.M. I  
was walking west on Second South Street, on  
the south side of the street at No. 114 East  
2nd South, which point is just east of State  
Street. I was walking along and the first  
thing I knew I had fallen down--caught my foot  
27 in a hole. It seemed to me to be a pretty big  
hole. A gentleman, who I later learned was  
Mr. Sturges, came along and picked me up, and  
I think another one assisted him, and took me  
into a little eating place. They phoned for  
the ambulance, and took me to the emergency  
hospital. When I got there my ankle was swoller  
and Dr. Raile, the city doctor, just treated

g. it--couldn't do anything more on account of the  
swelling, and sent me home. I was later  
8 treated by Dr. Raile after the swelling went  
down, at which time he put a cast on my ankle.  
Upon a later occasion when I went to his of-  
9 fice, he had a picture taken of my ankle. He  
told me then that the bones were broken.

After the injury occurred I was confined to  
8 my room for several weeks. I couldn't walk  
at all for a week or ten days. After that,  
when I had the cast on, I walked on crutches  
for about six weeks. After I discarded the  
crutches, I was not able to walk in a normal  
9 fashion, but had to walk with a cane for about  
three months. At the time the injury occurred,  
I suffered pain in my right ankle, and have  
had pain in it off and on until the present  
0 time. I am unable to walk as well now as I  
did before the injury, there is stiffness and  
weakness present in my ankle now, and the  
injury has affected my general health. I don't  
feel as strong as I did before. I have diffi-  
culty in climbing stairs, and can do so only  
by clinging to the railing. It hurts when I



r. climb. I have to take one step at a time, putting one foot up then the other foot. I can't step one after the other. My age at the time of the injury was 75.

1 Within 30 days after my injury, I filed a claim for damages with the City Commission in the form of a letter asking compensation for my injury. Exhibit "A" is a copy of that letter. The original was signed by me.

MR. DRAPER: I wish to offer the letter in evidence at this time, Your Honor.

MR. IRVINE: We object to it on the ground it is immaterial, irrelevant, incompetent, and not in compliance with Section 15-7-76 and 15-7-77, Revised Statutes of Utah, 1933.

THE COURT: The Court will reserve a ruling upon it at this time. You can proceed with other evidence.

2 Question: Mrs. Hamilton, have you ever been notified that your claim was allowed?

Answer: No, excepting I went to see Mr. Irvine, and he said they wouldn't accept it, but he offered me \$25 to settle the case.

statement from the record on the ground it is immaterial, irrelevant, and incompetent.

MR. DRAPER: Your Honor please, I agree with counsel for one purpose it would be immaterial, irrelevant, and incompetent, but I think it is admissible here to show the waiver of the City of defects in that claim. I can cite authorities on that point if Your Honor desires.

MR. IRVINE: So as to perfect the record we move to strike that portion of the answer with respect to what Mr. Irvine said.

THE COURT: The motion will be granted. That portion of the witness' answer where she said "Mr. Irvine offered her \$25" is stricken from the record, and the jury is instructed to ignore that remark as incompetent, and it is not to be taken into consideration in the case.

I have never received any payment from the City on account of my injury.

Question: Did anyone representing the City ever tell you your claim was not in

**proper legal form?**

Answer: No, sir.

MR. IRVINE: Object to that, and move to strike the answer on the ground it is incompetent, immaterial, and irrelevant.

THE COURT: The answer may go out. Motion is granted.

MR. DRAPER: Your Honor please, it is highly important if the City wishes to rely upon the defects in the claim required by statute that it show that it has requested the claimant to correct those defects before it may take advantage of them as a defense in an action at law. The question is asked for that purpose.

(Reporter read question)

THE COURT: It is your contention that there is a duty on the City--

MR. DRAPER: To request the claim be made in proper form, if it is not in proper form originally, if the City wishes to use the defects in an action at law. And I would like to cite--

THE COURT: No. I think that is the law.

THE COURT: You don't agree.

MR. IRVINE: We object to the question on the ground it is immaterial, irrelevant, incompetent, and calling for the conclusion of this witness.

THE COURT: We are in matters right now, gentlemen, which are important in this case. I am willing to hear from you, but not in the presence of the jury.

MR. IRVINE: I think we could probably proceed and finish the examination of this witness, and we can discuss--

THE COURT: If you will conclude with this witness--I have ruled on it; it is stricken. If I conclude that I have committed error after I hear your position on it I will permit you to go ahead after the jury returns.

Question: Did anyone ever request you to amend or correct your claim, Mrs. Hamilton?

MR. IRVINE: Object to that as immaterial, irrelevant, and incompetent.

THE COURT: The same ruling.

Question: Upon looking at the letter which was introduced in evidence here, Mrs. Hamilton,



xx Doc 60400000  
I noticed you requested compensation in the amount of five hundred dollars. Upon examining your complaint it will be seen you have here a request of twenty-five hundred dollars. I will ask you whether since you filed the letter with the City Commission you have suffered any pain or disability on account of your injury?

Answer; I have.

MR. IRVINE: Object to that as immaterial, irrelevant, and incompetent.

THE COURT: Objection sustained. You can show what pain she suffered from the date of injury right up to now.

MR. DRAPER: Here comes another matter of law which, perhaps, you would rather have argued in the absence of the jury.

THE COURT: I don't want to hear any argument on this point. I will stand on that.

MR. DRAPER: All right, Your Honor.

Question: I will ask you, Mrs. Hamilton, what was the reason for increasing the amount of damages you requested;

MR. IRVINE: Object to that as immaterial, irrelevant, and incompetent.

THE COURT: Objection sustained.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.  
Machine-generated OCR, may contain errors.



please, the cases hold--

THE COURT: I don't want any argument in front of the jury, Mr. Draper, unless I ask for it. When we get into a question where I want counsel's help I will excuse the jury. You make your record so you will be protected for an appeal from this court.

#### CROSS EXAMINATION OF THE PLAINTIFF

BY MR. IRVINE

I was alone at the time my injury occurred. I was going to town. It is about two and one-half blocks from the place where I live to the place where I fell. Once in a while I go that way to town, but I am not confined to one route. The gentleman who helped me into the little restaurant did not take me to the police emergency hospital. The Police Department sent an ambulance or car for me. It was my right foot that was injured.

#### DIRECT EXAMINATION OF WILLIAM PERRY STURGES

BY MR. DRAPER

My name is William Perry Sturges. I reside at 165½ Regent Street. I am now acquainted with the plaintiff, Mrs. Hamilton, but I was

not acquainted with her until the 23rd of March, 1938, and had never seen her before. Upon that day I saw her right there in front of that little restaurant at about 114 East Second South, just east of State Street. She fell and I picked her up. I saw her fall. At the time that she fell, she was walking west, and I was just about 7 or 8 feet behind her, going west. A hole in the pavement caused her to fall. The hole is still there. She fell right on her side, and I picked her up, and her legs was laying right beside the hole that is in the pavement. The hole, I should judge, is about that big (indicating). There are two little holes there. After I picked her up I took her in that little restaurant there. I and two officers that came and took my name looked at the hole. I am familiar with it now. It is still there. There are a manhole on the south side, and a manhole on the north side--outlet. And you can see where the "City Engineer", it says. A line about 12 or 14 feet runs across the pavement from the curb over to the alley. There is a manhole at one

end and what looks like a water drain at the other. The manhole has "The City Engineer" marked on it. The hole in which Mrs. Hamilton tripped was on that line on the sidewalk, about 10 or 12 feet north of the manhole in the alley. The line looks like it is about 12 or 14 inches wide, and it looks about 12 or 14 feet long from one hole to the other. There is a seam on each side of the line. At the point where Mrs. Hamilton fell, it looks like just common concrete put in a little hole-- just about 18 inches long and about, I should judge, 10 inches wide. The surface was rough. The pavement surrounding the hole is smooth.

Question: Was the sidewalk at that point, Mr. Sturges, free from cracks and irregularities?

MR. IRVINE: Object to that on the ground it is immaterial, irrelevant, and incompetent.

THE COURT: Objection sustained.

MR. DRAPER: If Your Honor please, it seems to me that goes to the very heart of this question, whether or not the sidewalk was in a defective condition.

THE COURT: Objection sustained.

STIPULATION

It was thereupon stipulated and agreed by and between plaintiff and defendant by their respective counsel that if the City Clerk or Recorder of Salt Lake City were called as a witness, he would testify that the original of the letter offered in evidence as Exhibit "A" was filed with the City Commission upon the 19th day of April, 1938, was designated by the City Commission, "Petition No. 292, 1938" and referred by them to the Department of Public Affairs and Finance. The Court reserved ruling on defendant's objection to the admission of said testimony on the ground it is immaterial, irrelevant and incompetent.

(Both parties rest).

11:30 o'clock A.M. - Jury admonished and excused until 2 o'clock P.M.

- - - - -

(Following in the absence of the jury):

MR. IRVINE: Comes now the defendant, Salt Lake City, and moves the Court to direct a verdict in favor of Salt Lake City, the defendant, and against Mrs. Hamilton, the plaintiff, on the



1. That from all of the evidence and from the pleadings it does not appear that there is a cause of action against Salt Lake City;

2. That there has not been established by the evidence any negligence on the part of Salt Lake City;

3. That it does not appear from the evidence that a claim in the form required by Section 15-7-76, Revised Statutes of Utah, 1933, was filed with Salt Lake City, the defendant, within the time and in the manner required by the provisions of said statute, and, therefore, the alleged action of the plaintiff is barred by the provisions of Section 15-7-76 and 15-7-77, Revised Statutes of Utah, 1933.

(Argument)

12:30 o'clock P.M. - Court in recess until  
2 o'clock P.M.

- - - - -

2 o'clock P.M. Court reconvened. The jurors being all present and in their places in the jury box, the following proceedings were had:

THE COURT: At this time, the plaintiff's Exhibit "A", being the purported claim which



has been heretofore offered in evidence is admitted, and your objections, Mr. Irvine, are overruled.

(At the request of the Court the stipulation regarding the testimony of the City Clerk or Recorder was then re-stated by counsel. Same objection by defendant as to admissibility of the testimony.)

THE COURT: Objection overruled, and the stipulation becomes a part of the evidence in the case.

I have concluded that the defendant's motion for a directed verdict in this case of no cause of action should be, and the same is hereby granted.

Mr. Clerk, will you give the form a verdict?

I have concluded, Jury, that in this case the plaintiff is unable to recover for the reason, among other things, that she did not file a claim which is required by law she must file before she can maintain an action against Salt Lake City. Under such circumstances it becomes the Court's right, and

the Court's duty to direct the jury to return a verdict in favor of the defendant and against the plaintiff. You have no discretion or choice in the matter, and you have no responsibility. The Court is wholly responsible for the action it is taking.

Mr. Langton, if you will, as formen of the jury, sign this verdict, I will discharge the jury from any further service in this case.

2:05 o'clock P. M. - Court in recess.

- - - - -

Certificate of Hyrum R. Moulton, Official Court Reporter of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, that as such reporter he attended the trial of the above cause and reported in shorthand all the testimony and proceedings had thereat and thereafter transcribed the same, and the foregoing constitutes a full, true and correct transcript of the same.

(Dated October 2, 1939.)

(Title of Court and Cause):

It is stipulated in the above-entitled action that the foregoing Bill of Exceptions, consisting of Pages 1-22, both inclusive, has been served within time; that there are no amendments proposed; and that the same, together with the exhibits introduced in evidence in said action and deemed a part of the Bill of Exceptions, may be settled by the Court before whom the case was tried as and for the plaintiff's Bill of Exceptions in said action.

Dated this 11 day of October, 1939.

DRAPER, BOYDEN & DRAPER

(Signed) COURTNEY R. DRAPER  
Attorneys for Plaintiff

HARRIS, CHRISTENSEN & IRVINE

(Signed) Fisher Harris G.E.  
Attorneys for Defendant

(Title of Court and Cause):

ORDER

The foregoing and above Bill of Exceptions, consisting of Pages 1-22, both inclusive, together with the exhibits received in evidence, having been served in time and no amendments having been proposed and the parties hereto

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.

Machine-generated OCR, may contain errors.

the same may be settled

as the Bill of Exceptions in said cause and the same being now presented to the undersigned Judge, before whom said cause was tried, and it further appearing that the foregoing proposed Bill of Exceptions contains a true, full, and correct statement of all the proceedings therein, the same is now settled, signed, and allowed as the plaintiff's Bill of Exceptions herein and ordered to be made a part of the record in said cause.

Dated this 13th day of October, 1939.

M. J. Bronson  
Judge of said Court

Attest

WILLIAM J. KORTH,  
CLERK  
(SEAL)

By Jacob Weiler  
Deputy Clerk

(Bill of Exceptions filed October 13, 1939)

EXHIBIT

EXHIBIT A

Case No. 62649

Salt Lake City, Utah

April 13, 1938

Honorable Board of City Commissioners  
City and County Building  
Salt Lake City, Utah

Gentlemen:

On March 23d at 9:30 AM while walking just West of 114 East 2nd South, through a defect in the sidewalk at that location I was injured by falling and having certain bones fractured near my ankle to such an extent that I have had to have same in a cast, and move about on crutches since said injury. In view of the fact, that since said date I have been confined at my residence and have suffered extreme pain I feel that I should be compensated for such injury to the extent of not less than \$500.

Respectfully submitted for  
your immediate consideration,

---

(Filed September 11, 1939).

(Title of Court and Cause):

VERDICT

We, the Jurors impaneled in the above

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services  
Library Services and Technology Act, administered by the Utah State Library.

Machine-generated OCR, may contain errors.  
favor of the defendant



and against the plaintiff no cause of action.  
Dated Sept. 11, 1939.

ROBERT I. LANGTON, Foreman  
(Filed September 11, 1939).

(Title of Court and Cause):

JUDGMENT ON VERDICT

This action came on regularly for trial. The said parties appeared by their attorneys. A jury of 8 persons was regularly impaneled and sworn to try said action. Witnesses on the part of plaintiff and defendant were sworn and examined. After hearing evidence, the argument of counsel, and instructions of the Court, the jury retired to consider of thier verdict, and subsequently returned into Court, and being called, answered to their names, and say they find a verdict for the

"We, the Jurors impaneled in the above case, find the issues in favor of the defendant and against the plaintiff, "no cause of action".

Dated; September 11, 1939. ROBERT I. LANGTON  
Foreman

WHEREFORE, by virtue of the law and by

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.

Machine-generated OCR, may contain errors.

res ~~-----~~ resaid, it is

ordered, adjudged and decreed that said defendant, Salt Lake City, have and recover from the plaintiff the sum of "No cause of action" DOLLARS with interest thereon at the rate of \_\_\_\_\_ per cent per \_\_\_\_\_ from the date hereof until paid, together with said \_\_\_\_\_ costs and disbursements incurred in this action, amounting to the sum of            Dollars.

Judgment entered Sept. 11, A. D. 1939.

I, WILLIAM J. KORTH, Clerk of the Third Judicial District Court of the State of Utah, in and for the County of Salt Lake, do hereby certify that the foregoing is a full, true and correct copy of the Judgment entered in the above entitled action.

WITNESS my hand and the Seal of said Court at Salt Lake City this 11th day of Sept. A. D. 1939.

(SEAL) WILLIAM J. KORTH, Clerk

By Jacob Weiler, Deputy Clerk

(Filed September 12, 1939).

(Title of Court and Cause):

NOTICE OF APPEAL

TO THE DEFENDANT SALT LAKE CITY and TO HARRIS,

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.

Machine-generated OCR, may contain errors.

CHF

ATTORNEYS:

You and each of you will please take notice that the plaintiff hereby appeals to the Supreme Court of the State of Utah from that certain judgment made and entered in the above-entitled cause upon the 12th day of September, 1939, by the District Court of the Third Judicial District in and for the County of Salt Lake, State of Utah, and from the whole of said judgment.

Dated this 11th day of December, 1939.

DRAPER, BOYDEN & DRAPER

(Signed) COURTNEY R. DRAPER  
Attorneys for Plaintiff

(Acknowledgment of service).

(Filed December 11, 1939).

(Title of Court and Cause):

CLERK'S CERTIFICATE

I, WILLIAM J. KORTH, Clerk of the above entitled Court, do hereby certify that the above and foregoing and hereto attached files contain all the original papers filed in this Court in the above entitled case, including the original Bill of Exceptions and Notice of Appeal, together with full,

true and correct copies of original orders made by the Court. The whole constituting the Judgment Roll therein. And that the same is a full, true and correct transcript of the record as it appears in my office.

And I further certify that an Affidavit of Impecuniosity, in lieu of an Undertaking on Appeal was filed therein, on the 11th day of December, A. D. 1939.

And I further certify that said Judgment Roll is this day transmitted to the Supreme Court of the State of Utah, pursuant to such appeal.

WITNESS my hand and the Seal of said Court at Salt Lake City, Utah, this 20th day of December, A. D. 1939.

WILLIAM J. KORTE, CLERK  
THIRD JUDICIAL DISTRICT COURT

(SEAL) BY Alvin Keddington  
Deputy Clerk

(Filed December 21, 1939, in Supreme Court.

(Title of Court and Cause):

#### ASSIGNMENT OF ERRORS

Comes now Mrs. M. E. Hamilton, the plaintiff and appellant and assigns the following

manifest and prejudicial errors committed by the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, in which said Court the above entitled action was tried, and upon which appellant relies for reversal of "the" judgment of said Court, from which judgment this appeal is taken, namely:

1. The Court erred in striking from the record, at defendant's request, the testimony of plaintiff that Mr. Irvine, the defendant's attorney, offered her \$25.00 in settlement of her claim against the defendant. (Tr. 32, Ab. 11, 12).

2. The Court erred in striking from the record, at defendant's request, the testimony of plaintiff that she was never notified that her claim was not in proper legal form (Tr. 33, 34, Ab. 12, 13, 14).

3. The Court erred in refusing, at defendant's request, to permit the plaintiff to testify whether anyone had ever requested her to amend or correct her claim. (Tr. 34, Ab. 14).

4. The Court erred in sustaining defendant's



objection and refusing to permit the plaintiff to testify whether she had suffered any pain or disability on account of her injury, since the filing of her claim (Exhibit "A") with the City Commission, requesting compensation for said injury. (Tr. 34, 35, Ab. 15).

5. The Court erred in sustaining defendant objection and refusing to permit the plaintiff to testify regarding her reason for claiming damages in excess of the amount requested by her in her claim (Exhibit "A") filed with the City Commission. (Tr. 35, Ab. 15, 16).

6. The Court erred in sustaining defendant objection and refusing to permit the witness William Perry Sturges to testify whether the sidewalk at the point where plaintiff's injury occurred was free from cracks and irregularities (Tr. 42, Ab. 18).

7. The Court erred in its conclusion, stated to the jury, that the plaintiff did not file a claim which is required by law to be filed before she can maintain an action against Salt Lake City (Tr. 45, Ab. 21).

8. The Court erred in directing the jury

to return a verdict in favor of the defendant and against the plaintiff (Tr. 45, 46, Ab. 21, 22).

9. The Court erred in entering judgment in favor of the defendant and against the plaintiff, no cause of action (Tr. 21, Ab. 26, 27).

WHEREFORE, Mrs. M. E. Hamilton, plaintiff and appellant, prays that because of the manifold errors herein assigned, the said judgment entered herein be vacated and set aside and that she be granted a new trial, and such other and further relief in the premises as may be fair and just.

DRAPER, BOYDEN & DRAPER

(Signed) COURTNEY R. DRAPER  
Attorneys for Plaintiff  
and Appellant

(Acknowledgment of service).

(Filed January 5, 1940, in Supreme Court).

\* \* \* \* \*

CE15

IN THE SUPREME COURT OF THE  
STATE OF UTAH

---00000---

MRS. M. E. HAMILTON, :

Appellant, :

-VS- :

No. 6215

SALT LAKE CITY, a  
municipal corporation, :

Respondent. :

---00000---

Appeal from the District Court of the Third Ju-  
dicial District in and for Salt Lake County,  
State of Utah  
Hon. M. J. Bronson, Judge

---00000---

APPELLANT'S BRIEF

---00000---

DRAPER, BOYDEN & DRAPER  
Attorneys for Plaintiff and  
Appellant  
1122 Continental Bank Bldg.  
Salt Lake City, Utah

FILED

MAR 15 1940

CLERK SUPREME COURT UTAH

# TOPICS

## Page

Statement of the Case.....	1
Statement of Error.....	5
Statement of Questions Involved.....	7
Argument.....	9
I. The Complaint states a Cause of Action.....	10
II. The Facts Proved or Offered to be Proved Made a Case for the Jury..	11
A. There was sufficient evidence of an injury to appellant, caused by the negligence of respondent, to make a case for the jury.....	11
B. Appellant's action is not barred by the statute regarding filing of claims....	13
III. Appellant Should Have Been Permitted to Show Cause for Increasing her Demand.....	59
IV. Appellant Should Have Been Permitted to Show the Condition of the Sidewalk at the Place where the Injury Occurred.....	60
Conclusion.....	61

## CASES CITED

Atlanta v. Hawkins, 45 Ga. App. 847, 186 S.E. 882.....	26
Austin v. Long, 5 Ga. App. 551, 55 S.E. 64.....	37
Dean v. Portland, 100 Maine 467, 84 Atl. 961.....	25
Darger v. Salt Lake City, 86 U. 403, 101 P. 233, 13 A.L.N. 5.....	60, 60
Blissard Bros. v. Growers' Canning Co., (Iowa), 148 N.E. 973.....	37
Bowles v. Richmond, 147 Va. 720, 133 S.E. 808, affirming 147 Va. 720, 129 S.E. 480.....	48, 55
Bowman v. Ogden City, 33 U. 196, 63 P. 561.....	20, 40, 52, 54, 57



Buchmeier v. Davenport, 133 Iowa 623, 116 N.E. 885.....	20
Burton v. Salt Lake City, 69 U. 186, 253 P. 443, 51 A.L.R. 364. 29, 33, 34, 38	
Cawthorn v. Houston, (Texas) 231 S.W. 701.....	32
Chamberlain v. Iba, 181 N.Y. 486, 74 N.E. 481.....	36
Connor v. Salt Lake City, 28 U. 248, 78 P. 479.....17, 20, 21, 27, 29	
Crumbley v. Jacksonville, 102 Fla. 408, 135 So. 885, affirmed 138 So. 486.....	51
Dierks Lumber & Coal Co. v. Tellett, 178 Ark. 199, 10 S.W. (2d) 5.....	37
Denley v. Bailey, 48 Colo. 373, 110 P. 63. Draper v. Springwells, 235 Mich. 168, 209 N.W. 150.....	38 51
Dunn v. Boise, 46 Ida. 362, 262 P. 507....	17
East Chicago v. Gilbert, 59 Ind. App. 613, 108 N.E. 29.....	20
Elrod v. Franklin, 140 Tenn. 228, 204 S.W. 296.....	24
Farley v. Lockport, 61 Misc. 417, 113 N.Y.S. 702.....	52
Finn v. New England Tel. & Tel. Co., 101 Maine 279, 84 Atl. 490.....	35
Foster v. Bellaire, 127 Mich. 13, 86 N.W. 383.....	51
Gagne v. New Haven Road Constr. Co., 87 N.H. 153, 175 Atl. 818.....	35
Gannon v. Fitzpatrick, 88 N.H. 147, 191 Atl. 488.....	26
Germaine v. Muskegon, 105 Mich. 213, 63 N.W. 78.....	51
Could v. Dwelling House Ins. Co., 134 Pa. 570, 19 Atl. 793, 19 Am. St. Rep. 717.....	37
Grissold v. Ludington, 116 Mich. 401, 74 N.W. 883.....41, 46	



<b>[REDACTED] v. Janesville, 137 Wis.</b>	
1, 111 N.W. 194.....	26
<b>Hartford Bridge Co. v. Granger,</b>	
4 Conn. 142.....	33
<b>Kolt v. Great Eastern Casualty Co.,</b>	
33 U. 543, 173 P. 1163.....	37
<b>Hopkins v. Rodgers; 91 N.Y.S. 743.....</b>	37
<b>Hurley v. Town of Wingham, 63 U. 509,</b>	
220 P. 213.....	54, 57, 59
<b>Husband v. Salt Lake City, 52 U.</b>	
449, 62 P. (2d) 491.....	50, 53, 54, 58
<b>Hassing v. Ordway, 100 Iowa 611,</b>	
69 N.W. 1013.....	38
<b>Kibbe v. Miami, 133 Fla. 793, 139</b>	
So. 371.....	61
<b>Kriseler v. LeValley, 122 Mich. 575,</b>	
81 N.W. 580.....	51
<b>Kutcher v. Love, 19 Colo. 542, 36 P. 182</b>	33
<b>Langdon v. Ahrends, 166 Iowa 636, 147</b>	
N.W. 340.....	35
<b>Lang v. Pierce County, 22 Wash. 350,</b>	
61 P. 142.....	34
<b>Loveman v. Birmingham Ry. L. &amp; P. Co.,</b>	
149 Ala. 615, 43 So. 411.....	37
<b>Innes v. Parsons, 27 Ga. 503.....</b>	37
<b>Lynde v. Browning, 2 Tenn. Civ. App. 252</b>	37
<b>McComas v. Clements, 137 Kans. 651,</b>	
81 P. (2d) 895.....	33
<b>McIntosh v. Patton, 12 Ga. App. 305,</b>	
77 S.E. 6.....	37
<b>Moehan v. Conn'l. Casualty Ins. Co.,</b>	
166 S.C. 496, 155 S.E. 194.....	37
<b>Moore v. Detroit, 164 Mich. 343, 126</b>	
N.W. 715.....	51
<b>Moran v. Salt Lake City, 53 U. 407,</b>	
173 P. 702.....	23, 53, 54, 58
<b>Morlan v. Marcellus, 150 Mich. 400,</b>	
114 N.W. 256.....	51
<b>Moyer v. Oshkosh, 151 Wis. 586, 139</b>	
N.W. 378.....	26, 27
<b>Murphy v. St. Paul, (Minn.), 153 N.W.</b>	
619.....	17

Eagle v. Billings, 60 Mont. 278, 260 P. 717.....	30
People v. Justice, 147 N.Y.S. 357.....	52
Phoenix Assurance Co. Ltd. of London Ing. v. Davis (S.C.A. Tex.) 27 1/2 (2d) 884.....	35
Prassel v. Hovles, 4 Howard (S Miss.) 80.....	35
Ray v. Salt Lake City, 92 U. 412, 52 P. (2d) 240, 119 A.L. 143.....	15
St. Louis & S. F. S. Co. v. Stone, 78 Kans. 508, 37 P. 471.....	37
Savannah v. Holman, 43 Ga. App. 64, 153 S.E. 64.....	20
Shaw v. Steiner, 175 Ala. 363, 57 So. 700.....	37
Smith v. Mayfield, 183 Ill. 447, 45 N.E. 187.....	36
Stanley v. Beatty, 148 Kans. 402, 35 P. (2d) 637.....	34
Sweet v. Salt Lake City, 43 S. 306, 134 P. 1167.....	50
Taylor v. Ogden City, 31 U. 435, 214 P. 311.....	12
Titus v. Montezano, 106 Wash. 608, 181 P. 43.....	17, 20
Tulsa v. Whittenhall, 140 Okla. 160, 302 P. 321.....	25
Utah v. Travelers' Ins. Co., 28 Fed. Cas. No. 16,755.....	30, 40
Vermule v. Corning, 196 App. Div. 806, 174 N.Y.S. 2d affirmed 230 N.Y. 555, 180 N.E. 903, reviewing 166 N.Y.S. 846.23, 30	
Werner v. Wyandotte, 175 Mich. 696, 141 N.W. 368.....	47
Watson v. Reed, 129 Ala. 388, 20 So. 837.....	37

West v. Smith, 101 U.S. 333,	
25 L. Ed. 333.....	36
White v. Hober City, 32 U. 347,	
25 P. (2d) 333.....	23, 30
Whitney v. Cleveland, 13 Idaho 333,	
91 P. 172.....	33
Williams v. Nashville, 145 Tenn. 333,	
338 S.W. 33.....	24
Wright v. Portland, 113 Mich. 33,	
76 Mich. 141.....	46