

1979

# Salt Lake City, Corp., A Municiple Corporation of the State of Utah v. D. William Layton and Helen Layton, His Wife : Appellant's Reply Brief

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)



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. Don Layton; Pro Se Appellant Judy Lever; Attorney for the Plaintiff

---

## Recommended Citation

Reply Brief, *SLC Corp. v. Layton*, No. 16128 (Utah Supreme Court, 1979).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/1466](https://digitalcommons.law.byu.edu/uofu_sc2/1466)

This Reply Brief 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 (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

## TABLE OF CONTENTS

STATEMENT OF FACTS	Page 1
Rebuttal	2-7
Conclusion	7-10

## STATUTES CITED

Revised Statutes of Utah 1898 Chapter 2, Section 1134, 1135, 1137	1
Revised Statutes of Utah 1898 Title 25, Chapter 1, Section 1116	2, 4
Utah State Constitution Art. VI, Sec. 26, No. 12	3, 4, 6, 9
Utah State Constitution Art. VIII, Sec. 22	8
Revised Statutes of Utah 1898 Title 25, Chapter 1, Sections 1114 - 1120	8
Revised Statutes of Utah 1898 Real Estate, Chapter VI, Plats and Subdivisions, Sec. 2014	8
Utah State Constitution Art. VI, Sec. 26, No. 16	9

## CASES CITED

White v Salt Lake City 121 U 134	3
-------------------------------------	---

IN THE SUPREME COURT  
OF THE STATE OF UTAH

-----

SALT LAKE CITY CORP., a	)	
municipal corporation of	)	
the State of Utah,	)	
	)	
Plaintiff-Respondent	)	Case No. 16128
vs.	)	
	)	
D. WILLIAM LAYTON and	)	
HELEN LAYTON, his wife,	)	
	)	
Defendants-Appellants.	)	

-----

APPELLANT'S REPLY BRIEF

-----

1. There is really no question as to the facts admitted by the City on page 3 and 4 of their brief, except number 5. This is in error as Blocks 2 and 4 of appellant's property are now and have always been in Salt Lake County. (See tax notices)

2. There is no need for a factual hearing. It is a simple matter of addition--1897 plus 5 years equals 1902.

Sections 134, 135, and 137, Chapter 2, Revised Statutes of Utah 1898 required County Commissioners and supervisors to keep a record of monies expended on public roads. Since the City failed to show any amount from these records spent

on this portion, or any portion of "Pearl Street" for that period of time and appellant found no record either, therefore the City failed to make a prima facie case as to the public right or equity to "Pearl Street".

3. Defendant-appellants are at a loss to understand how on the one hand in point 7 of their statement of facts, the City maintains that because the Southern portion still appears on official maps of Salt Lake County, it gives them good title to it, yet in another case before this Court and others, namely Salt Lake City vs. D. Wm. Layton #222264, even though the road there is clearly shown on plat maps on file in the United States Land Office in Salt Lake City for section 2, & 3, Township 1 South Range 2 East SLB&M, and the Congress of the United States passed a statute at large in 1914 preserving the rights to the road, the City in that case denies that Layton has a right to that road, yet now says they have a right to this one.

4. Respondents argument, Point I -- At the top of page 8 of respondent's brief, a quote from the law has been underlined except the following sentence:

" . . . provided, that a road not used for a period of five years ceases to be a highway".

The words or worked were omitted after used. This provides a distinction as to whether private or public rights are involved. However, once this road has ceased to be, it is a dead issue and cannot be brought back to life 75 years later.

5. Case law clearly illustrates the conditions which made necessary the passage of the provision found at the top of page 10. Appellants contend that they do not apply when one party owns all the land in the subdivided section.

6. The statement found near the bottom of page 10:

"This dedication occurred under the operation of statutory law and not the operation of common law principles reflected by the statutes relating to highways as urged by appellants Layton."

This would surely be governed by the general rules under Chapter 25 (Highways) or else be in conflict with the constitutional provision--"If there is a general rule, there is no need for a specific one".(Art. VI Sec. 26, No. 12)

Neither the public nor any private party has acquired any rights to the "street" which would allow the Court to interfere with defendant-appellant's peaceful possession

7. From the argument set forth in Point II which uses the word determinable and cites the case of White v Salt Lake City, 121 U 134, it is apparent that there is a great difference between the facts in that case and the one we are now discussing. In the White case the street had been in use for years, the use was for the public--a water line under a main street, there was no question of non-use and claims being barred by the 5 year provision. In the present case no one but the Laytons have used the street, the proposed use is a speculative use by a non-contributor, and as there is no record of any use and the self-executing

provision of Section 1116 Laws of Utah 1898, is in effect.

Point II ignores the fact that there were three separate ways set forth in the law for the vacation of streets in 1902.

8. Point III tries to circumvent the fact that the 5-year non use provision was in full force and effect until 1911 when it was changed by the legislature.

Also, the statement on page 17 which says:

"It is interesting to note that each of the above mentioned Utah cases imply the public's interest in subdivision streets would not be subject to abandonment if they had been a City street".

This holding is clearly against the constitutional prohibition of Article VI, Section 26, No. 12 as follows:

"The Legislature is prohibited from enacting any private or special laws in the following cases:  
... 12. Incorporating cities, towns or villages; changing or amending the charter of any city, town or village; laying out, opening, vacating or altering town plats, highways, streets, wards, alleys or public grounds. (emphasis added)

9. On the top of page 21 is found:

"They reaped the benefits of that formal subdivision platting and likewise, are bound by the consequences and provisions selected".

Appellants Layton are at a loss to know how on one hand respondents say on page 21 line 9 that they paid no taxes on the street that wasn't there, were taxed as if it were and now find themselves to be "reaping the benefits" of having the neighboring non-contributor owner, forcing

the appellants to let them use part of their land, and having to defend their rights to it in court when there has been no public need shown for this small area whatsoever. As far as the public investment goes, which is mentioned in the middle paragraph of page 21, there simply was none. I am sure that the ubiquitous "reasonable" man who should be so everywhere present in legal forums, would never believe that lots are not taxed at a higher rate than acreage to make up for the difference.

10. Point IV on page 22 at the bottom of the page has the following statement:

"In 1902, only a claim would have existed--not a self-executing vested right. After 1911, the five year "non-use" provision was completely eliminated and any unexercised claim was extinguished, in a statutory provision similar to establishment of a Statute of limitations".

Let us go back to 1902 for a moment. At that time, what right or claim would the public have had? None--no use, no monies expended, no need, no reason for public authorities to have pursued the matter at all. How now could these empty claims come back to life 75 years later? If they were barred then, they would certainly be barred now.

In Point IV #2, the last line says:

"Furthermore, the developer sold lots and improved the north portion of Pearl Street".

That simply is not true. The northern portion of the

street was not improved until after appellants Layton owned the land. It was done at the direction of and with the agreement of both the appellant and the County Road authorities in the middle 1950's. The City was still more than 10 years in the future. If ever there was an applicable place for the doctrine of laches it is now and to be used against the respondent.

In Point IV #3. To make a distinction between County streets and City streets clearly is in violation of Article VI, Sec. 26, #12 Constitution of the State of Utah.

Point IV #4. The respondent once again alleges that appellant has received "all of the benefits that came from the subdivision platting itself" on page 24, yet lists not one. Appellant intends to develop the area under one ownership and with only one purpose in mind; that is, to achieve the greatest good for the whole area and to fully utilize the railroad on the South, the road on the West (1045 West) and 17th South on the North.

Point IV #5. There is nothing stopping the abutting land owner on the east of appellants property from developing his own lot just as all the property owners in Quayle Street have developed their similar lots.

Point IV #6. This case is here to decide a non-contributor's rights to a proposed, by never used segment of a street. This street goes nowhere, as the railroad prevents its extension to the south. We do not have to try all the troubles of the world in this one case.



Point V on page 27 line 8 (this is Missouri not Kansas), there is an admission shown below by the respondent that appellants are right, and common sense, if there be a distinction between it and common law, would have prevented this matter from achieving its present form and size.

There was and is no common chain of title with the dedicator.

The statement by the respondent City on line 21 of page 27:

"In a case where abutting property owners do not share a common chain of title with the dedicator, then non-contributors gain nothing from the vacation".

The balance of the above statement concerns private rights which as stated on page 28:

"This matter is not in controversy and the Court has no jurisdiction over that issue where the owner is not a party of this litigation".

The Court can take judicial notice that Cannon Sub. was recorded and it had different parties entirely.

It follows that if the non-contributors gain nothing by the vacation, then the respondent City has nothing to base its claim upon, and its annexation is in error and is void in this instance.

#### CONCLUSION

It is for certain that the laws of Utah were in operation during the period of 1897 through 1911 and that inasmuch as there has been no evidence produced that either public or private use was made of the property in question,

and there was no evidence produced by the respondent City that public money had ever been expended on improving the plot in question, it is safe to conclude that the southern portion of Pearl Street comes within the provision, "that a road not used, or worked for a period of five years ceases to be a highway" and that it reverted to the successors of the original dedicator.

1. The appellant's claim to the disputed land should be upheld.
2. The respondent is bound by the effects of the 1898 provision relating to 5 years non-ues just the same as appellants are entitled to the protection of the operation of the laws.
3. The fact that this case could be brought before the Court violates the spirit of the doctrine of stare decisis.
4. The only way this case can be fairly before the Court is on the question of the contributors rights. Appellants cite the constitutional mandate which appears in Article VIII Sec. 22.

"District judges may, at any time, report defects and omissions in the law to the Supreme Court, and the Supreme Court, on or before the first day of December of each year, shall report in writing to the Governor any seeming defect or omission in the law".

Each generation does not have to reinvent the wheel.

5. The conflict between Title 25 Highways, Section 1114-1120, Laws of Utah 1898, and Chap. 6 Real Estate, Laws of Utah 1898, must be resolved in light of the Constitution

of Utah Art. VI, Sec. 26, #12 which prohibits the legislature from enacting any private or special laws in the following cases: No. 12:

1. "Laying out, opening, vacating or altering town plats, highways, streets, wards, alleys, or public grounds."

6. Whereas there was no evidence presented to the Court concerning public need and it was repeated throughout respondent's brief that the adjoining land holder would benefit from the opening of Pearl Street, it becomes clearly evident that the City by attacking appellant, is defending the adjoining land owner and attempting to circumvent the prohibition contained in #16 of the above set forth section which prohibits granting to an individual, association or corporation any privilege, immunity or franchise.

The respondent City could not be here were it not for the fact that the appellant's neighbor to the east annexed to the City. Like it or not, they are both riding the same horse.

In light of the facts which are admitted by both sides, it seems that the respondent City should submit that the principles of equity and public policy, laches, and estoppel be used against them.

In closing, appellants ask that the lower Court's order be reversed, that a new addition be added to the U.C.A. concerning non-contributors rights, and that appellants claims be confirmed so that proper utilization can be made

of the area so as to enhance and increase the use of the Jordan River Parkway and the other large open spaces the City has to the west.

Respectively Submitted,

*Don Layton*

Don Layton

Mailed 2 copies of Reply brief this date to Judy Lever,  
Assistant City Attorney. June 8, 1979.

*Don Layton*