

1931

# William Budge Memorial Hospital v. E.N. Maughan : Abstract of Record

Utah Supreme Court

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George D. Preston; attorney for defendant. Leon Fannesbeck; attorney for the appellant.

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## Recommended Citation

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# IN THE SUPREME COURT OF THE STATE OF UTAH.

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WILLIAM BUDGE MEMORIAL HOSPITAL,  
a corporation,

*Plaintiff and Defendant*

vs.

E. N. MAUGHAN, as County Treasurer of  
Cache County, State of Utah,

*Defendant and Appellant*

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## Abstract of Record.

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GEORGE D. PRESTON

LEON FONNESBECK

*Attorneys for Defendant and Appellant.*

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Appeal from the District Court of the First Judicial  
District of the State of Utah, in and for Cache County.

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# IN THE SUPREME COURT OF THE STATE OF UTAH.

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IN THE FIRST JUDICIAL DISTRICT COURT IN AND  
FOR CACHE COUNTY, UTAH.

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WILLIAM BUDGE MEMORIAL HOSPITAL,  
a corporation,  
*Plaintiff.*

vs.

E. N. MAUGHAN, as County Treasurer of  
Cache County, State of Utah,  
*Defendant.*

---

## COMPLAINT.

Plaintiff complains and alleges:

### I.

That the defendant is the duly elected, qualified and acting Treasurer of Cache County, State of Utah.

### II.

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, and at all times herein mentioned was and now is the owner, in possession and entitled to the possession of

the following described real estate, located in the City of Logan, Cache County, State of Utah, to-wit:

Commencing at the Southwest corner of Lot 4, Glock 6, Plat "C", Logan City Survey, and running thence East 8 rods; thence North 14 rods 9 feet; thence West 8 rods; thence South 14 rods 9 feet to place of beginning.

### III.

That upon said property plaintiff, continuously during the year 1928, and for a long time prior thereto, has maintained and operated a hospital for the care and treatment of the sick, wounded, injured and infirm persons, and in connection with said institution plaintiff has also maintained and conducted a home for the accomodation, comfort, education and training of nurses in the service of said hospital, and said real estate hereinbefore described is necessary for the convenient use and occupation of said hospital establishment and plant.

That the occupation, use and maintenance of said property, for the aforesaid purposes, is the sole and only business of plaintiff, and plaintiff, at no time during the year 1928, operated, nor was said property or any part thereof, at any time, during said year, used for the gain or profit of the stockholders of the plaintiff, *but said property, and the whole thereof, with the buildings thereon, has at all times been and now is used exclusively for charitable purposes.*

### V.

That on or about the *21st day of November 1928* the Assessor of Cache County, State of Utah, *wrongfully and illegally* placed said property upon the roll of property subject to taxation in said Cache County, for the year 1928, and listed said real property at a valuation of \$1480.00, and the buildings and improvements thereon at \$20,800.00, and thereafter the County Auditor of said

Cache County caused to be entered in said assessment book a tax of \$991.46 against said property, computed upon the basis of the levy of taxes for the year 1928 against property subject to taxation in said county; that the defendant, under the direction of the Board of County Commissioners of said county, on or about the 14th day of December 1928, published the list of all property within said county upon which the tax for the year 1928 was delinquent, and the said defendant, for the purpose of collecting said taxes in this paragraph mentioned, against the above described property of the plaintiff, included said property in said delinquent list, describing the same as the South 15 rods  $4\frac{1}{2}$  feet of Lot 4, Block 6, Plat "C", Logan City Survey, with the notification that unless said tax so levied against the same is paid before December 21st, 1928, said property will be sold for said taxes, so claimed for the year 1928, and plaintiff alleges that defendant is attempting, and unless restrained by an order of this court will continue to attempt to collect said taxes, and holds out and asserts that he will sell the above described property in accordance with said notice.

## VI.

That the listing of said property in said roll of property subject to taxation for the year 1928, and the entering of the tax against the same, was beyond the jurisdiction, right or power of the said county officers, and was illegal and void, for the following reasons:

(a) That said property was not, nor was any part thereof, subject to taxation for the year 1928, but the same was wholly exempt from taxation by virtue of Section 3, Article 13, Constitution of the State of Utah, and Section 5863 Compiled Laws of Utah 1917.

(b) That said property was not listed in said assessment book on or before the first Monday in May, as required by law, nor until on or about the 21st day of November 1928, nor was any notice given to the plaintiff of



the so-called tax claimed to be due against said property, until on or about said date, and that therefore no opportunity was afforded to the plaintiff to appear before the Board of Equalization, for the purpose of having the matter of the so-called assessment against said property considered by said Board.

## VII.

That in the event said defendant is permitted to proceed with the sale of said property, for the collection of said tax, in accordance with said notice, such sale will constitute a cloud upon plaintiff's title, which will be to plaintiff's great and irreparable damage and injury, for which plaintiff has no plain, speedy or adequate remedy at law.

WEHEREFORE, plaintiff prays judgment as follows:

1. That an order be entered herein that the defendant show cause before this court, at a time and place in said order designated, why, pending the final determination of this action, he should not be enjoined from attempting to collect said taxes, or from selling the property of the plaintiff, in accordance with said notice, or otherwise or at all, and that upon said hearing a temporary injunction issue, and that upon the final hearing of this cause said injunction be made permanent.

2. That pending the hearing upon said order to show cause said defendant be restrained from attempting to collect said tax and from making said sale of said property, in accordance with said notice, or otherwise, or at all.

3. That plaintiff have such other and further relief as to the court shall seem just and equitable and its costs incurred herein.

Stewart, Alexander & Budge,

*Attorneys for plaintiff.*

(Duly verified.)

**ANSWER.**

*(Title of Court and Cause.)*

Comes now the defendant in the above entitled cause and for Answer to the complaint filed herein, admits, denies and alleges as follows:

**I.**

Admits the allegations of paragraphs Nos. 1, 2, and 3, of the said complaint.

**II.**

Admits the the Assessor of Cache County placed the plaintiff's said property upon the roll of the property subject to taxation for the year 1928, and listed said real property at a valuation of \$1480.00, and the buildings and improvements thereon at \$20,800.00, and that thereafter a tax of \$991.46 was duly entered in the assessment book against the said property, computed upon the basis of the tax levy for the year 1928, against the property subject to taxation in said Cache County.

**III.**

Admits that the defendant as such County Treasurer, on or about the 14th day of December, 1928, duly published the list of all property within said county upon which the tax for the year 1928, was delinquent and included the property of the plaintiff in said delinquent list, with the notification in said publication that unless the said tax so levied was paid on or before December 21st, 1928, said property would be sold for said taxes.

**IV.**

Admits that defendant as such County Treasurer of Cache County is attempting, and unless restrained by an order of this court, will continue to attempt to collect the

said taxes against the said property of the plaintiff, and in this connection defendant alleges that in so doing he is attempting to perform his official duties as such County Treasurer, as provided by law.

In this connection this defendant alleges that the said property of the plaintiff was duly and regularly assessed for tax purposes by the Assessor of Cache County, Utah, and was duly and regularly placed and listed upon the tax roll like all other property in said county subject to taxation prior to May 1st, 1928, of which the plaintiff was given due and proper notice as provided by statute.

## V.

Defendant denies generally and specifically each and every allegation in said complaint not herein specifically admitted or qualified.

As a further and Separate Answer to the plaintiff's Complaint, defendant alleges as follows:

## I.

That the property described in paragraph 2 of the said complaint, together with the buildings thereon, and the whole thereof, belongs to the plaintiff, and that the plaintiff is the same corporation as the Utah-Idaho Hospital Company, which was organized on the 24th day of April 1914, for the purpose of carrying on the said hospital business for pecuniary profit and gain; and in this connection defendant is informed and believes and therefore alleges that the plaintiff, operating under its present name of the William Budge Memorial Hospital, is operating under the same policy and for the same purpose and object as the said Utah-Idaho Hospital Company.

## II.

That the plaintiff, neither under the name of the Utah-Idaho Hospital, nor of the William Budge Memorial

Hospital, has never complied with the provisions of the laws of this State governing the organization of corporations not for pecuniary profit or gain. In this connection defendant alleges that during each year prior to 1928 since its organization in 1914, the plaintiff's said property has been duly and regularly assessed and the plaintiff has paid its said taxes on the same as other taxable property in this State.

### III.

That the defendant is informed and believes, and therefore, alleges upon such information and belief, that during the year 1928, and for many years prior thereto, the plaintiff has been operated for gain and profit, and during the year 1928, and for many years prior thereto, plaintiff has required large and substantial hospital fees to be paid by all patients entering said hospital for care and treatment.

### IV.

Defendant further alleges upon said information and belief, that it has been the policy of the plaintiff during the year 1928, and for many years prior thereto to collect its regular hospital fees from all patients entering its said hospital for care and treatment, whenever possible, and at various and diverse times when the plaintiff has been unable to collect its hospital fees thus demanded, on account of the poverty and impecuniosity of the patient, the plaintiff, by its officers and agents, has appeared before the County Commissioners of Cache County and requested the County to pay such hospital fees.

### V.

Defendant is informed and believes and therefore alleges that at various times during the year 1928, and for many years prior thereto, the plaintiff has demanded

that the hospital fees be paid before it would permit the patient to leave its said hospital and that on various and diverse occasions, it has become necessary to take up public subscription and donation in order to pay such hospital fees so demanded by the plaintiff from its poor patients who were unable to pay for the same.

## VI.

Defendant further alleges that the plaintiff's said hospital is not a general hospital open to all medical practitioners in good standing in the medical association of this State, but in this connection defendant alleges that the said hospital was during the year 1928, and for a long time prior thereto, operated for the use, benefit and gain of certain members of the medical profession belonging to or affiliated with the Budge Clinic.

## VIII.

Defendant further alleges that the members of the said Budge Clinic own and control a majority of the stock of the plaintiff corporation, and that the said hospital is operated for the benefit, convenience and profit of the members of the said Budge Clinic.

Wherefore, the defendant having fully answered in the premises, prays the court to dissolve the restraining order heretofore issued by it in this cause, and to dismiss the complaint of the plaintiff, and that the defendant may have his costs in the matter; and for such other and further relief as to the court may seem just and equitable in the premises.

Geo. D. Preston and Leon Fannesbeck,

Attorneys for Defendant.

(Duly verified.)

*(Title of Court and Cause.)*

REPLY.

Comes now the plaintiff and answers the separate answer and affirmative defense of the defendant herein as follows:

I.

Answering paragraph I, plaintiff admits that the property described in paragraph II of said Complaint, together with the buildings thereon, and the whole thereof, belongs to the plaintiff, and that the plaintiff is the same corporation as the Utah-Idaho Hospital Company which was organized in 1914, but denied that said corporation was organized for the purpose of carrying on the said hospital business for pecuniary profit or gain.

II.

Answering paragraph II admits that the plaintiff has since its organization paid taxes on said property, but denies each and every other allegation in said paragraph.

III.

Answering paragraph III, plaintiff denies that during the year 1928 *and for many years prior thereto*, or at all, plaintiff has been operated for gain or profit, and denies that during the year 1928, *or for many years prior thereto*, or at all, plaintiff has required large and substantial hospital fees to be paid by all patients entering said hospital for care and treatment, but plaintiff alleges the facts to be in that respect that the plaintiff *has at all times* charged patients who entered its hospital for care and treatment only such hospital fees as were fair, reasonable and moderate and necessary to be charged for the maintenance, operation and upkeep of said hospital, including the purchase of necessary equipment and the

providing of necessary facilities for proper hospital service for the people of the section of country served by said hospital; and that all the income of said hospital *has at all times* been devoted to said purposes and has been used for no other purpose.

#### IV.

Answering paragraph IV plaintiff admits that it has been its *policy* during the year 1928, *and prior thereto*, to collect its regular hospital *fees from all patients entering its hospital for care and treatment who were able to pay*, and admits that at various and diverse times plaintiff has applied to the County Commissioners of Cache County for the payment of hospital fees for care and treatment of indigent persons cared for and treated at its hospital, but denies each and every other allegation of said paragraph IV.

#### V.

Denies the allegations of paragraph V.

#### VI.

Denies the allegations of paragraph VI and alleges the facts to be with respect to the matters in said paragraph that said hospital has been at all times, and now is operated under the plan or system in effect in a majority of the best regulated and *most successfully operated* hospitals in the United States, and known as the Closed Staff Plan, under which said plan said hospital has been and is open to all medical practitioners in good standing, for the care and treatment of their patients by said practitioners, except that all major surgical operations in said hospital must be performed by members of the hospital staff assigned to that particular class and character of professional service in said hospital.

## VII.

Answering paragraph VII, which is erroneously numbered VIII, plaintiff denies the allegations of said paragraph.

Denies each and every other allegation of said affirmative defense, except as hereinbefore admitted or denied.

WHEREFORE, plaintiff having replied to said Answer, prays that it have judgment as prayed for in its Complaint herein.

Stewart, Alexander & Budge,

*Attorneys for plaintiff.*

(Duly verified.)

---

*(Title of Court and Cause.)*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on regularly for trial on the 27th day of March, 1929, upon the complaint of the plaintiff, the answer of the defendant and plaintiff's reply to said answer, before the Honorable George S. Barker, a judge of the court of the Second Judicial District, sitting at the request of Honorable M. C. Harris, Judge of the District Court of the First Judicial District; Stewart, Alexander and Budge, of Salt Lake City, Utah, appearing as attorneys for the plaintiff, and George D. Preston, County Attorney, and Mr. Leon Fannesbeck, both of Logan, Utah, appearing as attorneys for the defendant, and the Court having heard the evidence of the respective parties and the arguments of counsel, and being fully advised in the premises, hereby makes the following Findings of Fact:

## I.

That at all times mentioned in plaintiff's complaint defendant was and he now is the duly elected, qualified and acting Treasurer of Cache County, State of Utah.



## II.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, and at all times in plaintiff's complaint mentioned was and now is the owner, in possession and entitled to the possession of the following described real estate located in the City of Logan, Cache County, State of Utah, to-wit:

Commencing at the Southwest corner of Lot 4, Block 6, Plat "C", Logan City Survey; running thence East 8 rods; thence North 14 rods 9 feet; thence West 8 rods; thence South 14 rods 9 feet to place of beginning.

## III.

That upon said property plaintiff continuously during the year 1928, and prior thereto, maintained and operated a hospital for the care and treatment of sick, wounded, injured and infirm persons, and in connection with said hospital plaintiff also maintained and conducted a home for the accommodation, comfort, education and training of nurses in the service of said hospital, and said real estate hereinbefore described, at all times in said complaint mentioned, was necessary for the convenient use and occupation of said hospital and nurses home.

## IV.

That the Assessor of Cache County at the time of assessing other property in Cache County, listed upon the roll of property subject to taxation for the year 1928, the said property of the plaintiff and assessed said real property at a valuation of Fourteen Hundred Eighty Dollars (\$1480.00), and the buildings and improvements thereon at Twenty Thousand Eight Hundred Dollars (\$20,800.00), and thereafter the County Auditor of Cache County caused to be entered in said assessment book a purported tax against said property for the said year 1928 of Nine

Hundred Ninety One Dollars and Forty Six Cents (\$991.46), computed upon the basis of the levy of taxes for said year against property subject to taxation in said county.

## V.

That said purported tax was not paid before the date fixed by law when taxes became delinquent for the year 1928, and defendant, as County Treasurer aforesaid, on or about the 14th day of December, 1928, published a list of all property within said county upon which taxes for the year 1928 were delinquent and said defendant, for the purpose of collecting the said so-called tax against plaintiff's said property, included said property in said delinquent list, describing the same as:

"The South 15 rods  $4\frac{1}{2}$  feet of Lot 4, Block 6, Plat "C", Logan City Survey"

together with the notification that unless said so-called tax so attempted to be levied against said property was paid before December 21st, 1928, said property would be sold for said so-called tax so claimed against the same for said year 1928; that defendant by such proceedings attempted to collect said so-called tax and held out and asserted that he would sell said property in accordance with said notice, and unless restrained and enjoined by decree of this Court, will continue to attempt to collect said so-called tax.

## VI.

That at the time said property was listed on the Cache County assessment roll of property subject to taxation for the year 1928, and at the time said so-called tax was entered by the County Auditor on said assessment roll, as hereinbefore set forth, and at all times continuously during the year 1928 said real property of the plaintiff, together with the said buildings and structures locat-

ed thereon, *was used exclusively for charitable purposes.*

As Conclusions of Law from the foregoing facts the Court finds:

I.

That said property of the plaintiff, and the whole thereof, was exempt from taxation during the year 1928.

II.

That the listing of said property on said roll of property subject to taxation for the year 1928, and the entering of said so-called tax against said property was without authority of and contrary to law and in violation of the rights of the plaintiff.

III.

That defendant, as County Treasurer, had no legal right, or authority to include said property of the plaintiff in the delinquent list for 1928, or to advertise said property, or any part thereof, for sale, or to attempt to make any sale thereof for the purpose of collecting or attempting to collect said so-called tax, and all said acts of said defendants were contrary to law and in violation of the rights of the plaintiff.

IV.

That to permit said property to be sold for said so-called tax would create a cloud in plaintiff's title to said property, to plaintiff's great and irreparable damage and injury, for which plaintiff has no plain, speedy or adequate remedy at law, and that plaintiff is therefore entitled to a decree that said so-called tax is illegal and void and constitutes no lien against plaintiff's said property and permanently enjoining said defendant from attempting to collect said so-called tax or from selling or attempting to sell said property of the plaintiff, or any part thereof, for the purpose of making collection of such tax.

## V.

That plaintiff is entitled to its costs herein incurred.

GEORGE S. BARKER,

District Judge.

Dated this 29th day of May, 1929.

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*(Title of Court and Cause.)*

## DECREE.

This cause came on regularly for trial on the 27th day of March, 1928, upon the complaint of the plaintiff, the answer of the defendant and plaintiff's reply to said answer, before the Honorable George S. Barker, a judge of the District Court of the Second Judicial District sitting at the request of Honorable M. C. Harris, Judge of the District Court of the First Judicial District, and the Court having heard all the evidence of the respective parties and the arguments of counsel, and being fully advised in the premises, and having made and signed its Findings of Fact and Conclusions of Law, now therefore, by reason of the premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

## I.

That the so-called tax of Nine Hundred Ninety One Dollars and Forty Six Cents (991.46) attempted to be assessed and levied for the year 1928, upon the tax records of Cache County, Utah, against the property of plaintiff hereinafter described, is illegal, void and of no effect, and the same constitutes no lien upon or encumbrance against said property or any part thereof.

## II.

That the defendant, E. N. Maughan, as County Treasurer of Cache County, State of Utah, and all persons acting in aid or assistance of him, be and they are, and each of them is, hereby permanently restrained and enjoined from collecting, or attempting to collect said so-called tax of Nine Hundred Ninety One Dollars and Forty Six Cents (\$991.46), or any tax, listed and entered upon the assessment roll of Cache County for the year 1928, and attempted to be assessed for said year against the said property of the plaintiff, and from selling, or attempting to sell, said property for said or any tax for said year.

## III.

That the property hereinbefore referred to is particularly described as follows, to-wit:

Commencing at the Southwest corner of Lot 4, Block 6, Plat "C", Logan City Survey, and running thence East 8 rods; thence North 14 rods 9 feet; thence West 8 rods; thence South 14 rods 9 feet to the place of beginning,

which said property is described in the delinquent tax list for Cache County for the year 1928 as:

"The South 15 rods  $4\frac{1}{2}$  feet of Lot 4, Block 6, Plat "C", Logan City Survey."

## IV.

That plaintiff recover its costs herein incurred taxed at \$.....

Dated at Logan, Utah, this 29th day of May, 19289.

GEORGE S. BARKER,

District Judge.

(Duly verified.)

**NOTICE OF MOTION FOR NEW TRIAL.**

To the above named plaintiff, and to its attorneys,  
Stewart, Alexander & Budge:

You and each of you will please take notice that on the 29th day of May, 1929, at the hour of 10 o'clock A. M. of said day, in the court room of the above entitled court, or as soon thereafter as counsel can be heard, the defendant will move the court to vacate its Findings of Fact, Decision and Judgment in the above entitled cause, and grant a new trial in the said cause upon the following grounds, to-wit:

1. Irregularities in the proceedings of the court, and rulings and orders of the court by which the defendant was prevented from having a fair trial.

2. Accident or surprise, which ordinary prudence could not have guarded against.

3. Newly discovered evidence, material for the defendant, which he could not, with reasonable diligence, have discovered and produced at the trial.

4. Insufficiency of the evidence to justify the decision of the court; and that said decision is against law.

5. Error in law occurring at the trial of the cause, and excepted to by the defendant.

Said motion will be made upon affidavits in support of said motion filed herewith and upon the minutes, files and papers in the above cause on file with the Clerk of said Court.

**GEORGE D. PRESTON  
LEON FONNESBECK**

**Attorneys for Defendant.**

*(Title of Court and Cause.)*

AFFIDAVIT IN SUPPORT OF MOTION FOR A  
NEW TRIAL.

STATE OF UTAH,

County of Cache.        ss.

Leon Fannesbeck, being first duly sworn, deposes and says that he is one of the attorneys for the defendant in the above entitled proceedings, and makes this affidavit in support of Motion for a new trial in the above cause. Affiant states that he, as well as his associate counsel and the defendant in the above cause were taken by surprise which ordinary prudence could not have guarded against by the rulings of the court in the above proceeding, including the testimony of defendant's witnesses where the period involved concerning the manner of conducting and operating the hospital was prior to the year 1928. That by the issue formed by the complaint and answer, as well as the reply, the manner of operating and conducting plaintiff's hospital, whether or not the same was conducted as a charitable institution, was put in issue not only for the year 1927, but for many years prior thereto, and that in pursuance of the issues thus formed by the pleadings, affiant and his associate counsel prepared the case and had witnesses subpoenaed in court ready to testify and whose testimony was excluded by the order of the court arbitrarily limiting the issues in this respect to the years 1927, and 1928.

Affiant further states that such actions, orders, and rulings on the part of the court were irregular and prevented the defendant from having a fair trial and prevented the defendant from showing in an affirmative manner that the hospital was, and always has been operated strictly as a business enterprise and in no respect as a charitable institution.

Affiant further states that had the pleadings been limited to the years 1927, and 1928, the defendant would have concentrated upon witnesses covering those years, and could have produced witnesses whose testimony would have shown that the hospital was operated as a business institution, and not as a charitable institution; but that defendant was unable to produce such witnesses inasmuch as the court's ruling limiting the issues to 1927, and 1928, was made during the latter part of the actual trial of the case, making it impossible for the defendant to interview or gather any additional testimony on these years.

LEON FONNESBECK.

Subscribed and sworn to before me this 24th day of May, 1929.

L. E. NELSON.

Notary Public.

(Seal)

Residing at Logan, Utah.

My commission expires October 23, 1929.

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*(Title of Court and Cause.)*

### NOTICE.

To the above Defendants and to Leon Fonnesebeck and George D. Preston, his attorneys:

You and each of you will please take notice that judgment was rendered and entered in the above entitled action on the 28th day of May, 1929, in favor of the plaintiff and against the defendant, and on said date the defendant's motion for a new trial was by the court overruled, and denied.

Dated this 27th day of July, 1929.

Stewart, Alexander & Budge,  
*Attorneys for plaintiff.*



*(Title of Court and Cause.)*

### NOTICE OF APPEAL.

To the Clerk of the above Court, to the plaintiff above named, and to Stewart, Alexander and Budge, Attorneys for Plaintiff:

You and each of you will please take notice that the defendant hereby appeals to the Supreme Court of the State of Utah, from the Findings of Fact, Conclusions of Law, and judgment made and entered in the above entitled cause by the above entitled court on the 29th day of May, 1929, adjudging that the property of the plaintiff was used exclusively for charitable purposes and was exempt from the payment of taxes and permanently enjoined the defendant from the collection of the taxes levied against the said property for the year 1928.

This appeal is taken both on the law and the facts.

George D. Preston,  
Leon Fonnesbeck,  
Attorneys for Defendant.

Due service, by copy, of the above and foregoing Notice is hereby acknowledged this 16th day of August, 1929.

Stewart, Alexander & Budge,  
Attorneys for plaintiff.

*(Title of Court and Cause.)*

### NOTICE OF APPEAL.

To the Clerk of the above Court, to the plaintiff above named, and to Stewart, Alexander and Budge, Attorneys for Plaintiff:

Pou and each of you will please take notice that the defendant hereby appeals to the Supreme Court of the

State of Utah, from the order of the court in the above entitled cause made and entered on the 29th day of May, 1929, over-ruling and denying the defendant's motion for a new trial in the said cause.

GEORGE D. PRESTON  
LEON FONNESBECK  
Attorneys for Defendant.

(Served by affidavit of mailing.)

---

MINUTE ENTRY Dated May 28, 1929.

Wm. Budge Memorial Hospital,

vs.

E. H. Maughan.

The matter herein in the above case having been heretofore submitted and by the Court taken under advisement.

Jesse R. Budge, Esq., appearing as attorney for the plaintiff and Leon Fannesbeck and George D. Preston, County Attorney, appearing as attorneys for the defendant.

It is now ordered that judgment be rendered in favor of the plaintiff and against the defendant as more fully set forth in the findings of fact, conclusions of law and decree signed and filed herein.

Whereupon attorneys for the defendant moves the Court for a new trial in the above entitled action. Arguments were made by counsel for the respective parties and the matters submitted to the Court for its decision. It is now ordered that the motion of the defendant for a new trial in the above entitled action be and it is over-ruled and dismissed.

Good cause shown therefore it is ordered that 30 days

additional time be given the defendant in which to prepare, serve and file their bill of exceptions.

It now being the hour of adjournment, it is ordered that court stand adjourned until June 8, 1929.

The foregoing minutes are hereby approved as correct.

GEORGE S. BARKER,

Non-resident Judge.

## TRANSCRIPT OF THE RECORD ON APPEAL.

2 This cause came on for trial March 27th, 1929, before Hon. George S. Barker; Messrs. Stewart, Alexander & Budge appearing as counsel for plaintiff and Leon Fonnesbeck and George D. Preston as counsel for defendant, the following proceedings were had:

Mr. Budge: If your Hon. please, I desire in paragraph 4 of the complaint, in the next to the last line, after the word "thereon" to insert the words "during the year 1928."

Mr. Fonnesbeck: We object to the interlineation on the ground that the pleadings are not only based on the year 1928, and for many years prior thereto as establishing a mode of conduct in the plaintiff's corporation, and as the issues are framed by the pleadings, it would change the testimony and the issues.

The Court: Is it limited to the year 1928?

3 Mr. Budge: Yes, that is the purport of it.

Mr. Fonnesbeck: If this motion is granted, it will materially change the issues now before the Court. Your honor will observe that in the answer we charge that this institution is operated and was organized as a business corporation, and that takes us back to 1914, and it has since that time been used as a busi-

ness institution for making money and pecuniary profit and not charitable, and it was not charitable in 1928, or for any year prior thereto, and this puts in issue the other years as well as 1928.

The Court: I take it, the issue is with respect to the use of the property during the year 1928. It may be true that the court should go into a time prior to that to determine the use of the premises during 1928. Now you may go into the years prior to that, perhaps as having a bearing on the issues as to the year 1928.

Mr. Fonnesbeck: That is all we want your honor.

The Court: The objection will be sustained.

Mr. Budge: Note an exception.

- 4 Dr. D. C. BUDGE was called as a witness for the plaintiff and testified as follows:

My name is D. C. Budge, I am a surgeon and reside in Logan City. I am familiar with the hospital property of the William Budge Memorial Hospital of Logan. It consists of the main building 100 feet long by  
 5 40 feet wide and the nurses home about 80 feet long and 40 feet in width. We have about 50 beds in the hospital. The rates charged are \$2.50 a day in a ward; \$2.75 a day semi-private; \$4.00 a day for private room, and two rooms at \$5.00 a day. There are 30 nurses. We pay the freshman nurses \$9.00 a month, Juniors \$10.00 a month, and Seniors, \$11.00 a month. In 1928, we had a school for nurses conducted by the hospital. We have laboratories, X-rays and  
 6 proper beds and all necessary things, like operating rooms, etc. for carrying on hospital activities.

The territory served by the hospital is Cache Valley, Box Elder County, Rich County, Bear Lake, and Southern Idaho. All patients who applied in 1928 were admitted except contagious diseases and insanity cases. Patients were sent to the hospital by any-

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body, bishops of wards and churches, Kiwanis and Rotary clubs, and other organizations. No distinction was made as to race, color, or creed. All patients are charged.

Q.: No matter from what source they came?

A.: We would attempt to have patients pay, yes. I  
7 think they did not all pay in 1928. Our policy in 1928 was to have it understood and the patients are notified as early as possible, or the responsible party appraised, that the bills must be paid. It is expected that the bills will be paid by the time they are ready to leave the hospital.

Q.: Your policy is to collect from all?

A.: Yes, or as much as we can do so.

Q.: In other words, so that I may understand you, if an organization or a bishop of a ward or the rotary club or some other organization sent a patient there you would attempt to get pay from the members of the organization that sent the patients?

A.: Yes, for the hospital fees.

8 Q.: What was the method of management of the hospital property.

Mr. Fonnesbeck: We object to that as an effort now being made to state how the corporation is operated and organized, which appears from the Articles and By-Laws which are the best evidence.

Exception over-ruled and defendant excepts.

A.: No distinction was made in 1928 in the treatment of patients. All were given the same class, and character of treatment. The hospital had nothing to  
9 do with arrangement of fixing the charge which the doctors made on their fees. The income from the hospital in 1928 was devoted to the maintenance of the hospital, payment of interest, maintenance and improvements. We had about 1800 in 1928. The

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- 10 hospital is standardized as required by the American College of Surgeons. The hospital was not required to file an income tax report in 1928. The members of the staff treated all the cases at the hospital. The X-ray work is of a highly technical character. We have a special man for that work. Major surgery is limited to two surgeons. Myself. I am the medical director and the Chief of the staff.
- 11 The nurses home is operated in connection with the hospital. Patients take their choice of rooms and the price they want to pay. The doctor receives no part of the hospital charges. The usual course of
- 12 training was given in the hospital to the nurses acceptable to the State Board of Medical Examiners.

### CROSS EXAMINATION.

The matters which come in the freshman year of nursing are the fundamental branches required in the practice of nursing such as anatomy, physiology, bacteriology, pathology. The second year becomes a little more difficult and scientific. In the third year they get surgery, medicine, and pediatrics, and all of those things.

Q.: What do you mean by pedriatics. A.: The treatment of disturbances of children. I am not exactly familiar with just what they do teach each year.

- 13 Once in a while we get patients from wards, the Bishop gives notice to us that they are sending a patient. The patient is admitted as a charity case, but the patient is billed for the amount of the hospital charge, the same as any other patient. The same is true when the patient is brought in by the Rotary or Kiwanis clubs, or the Bishop of the wards, or other relief organizations.
- 14 The County occasionally sends poor patients to the hospital, and they are charged the same rate as

other patients, including fees for laboratories, tests, X-rays, etc. In such cases we bill the County for the amount of the hospital fees. The County understands that the case is a county charge. The County pays for all patients sent to the hospital from the County. I call a patient that we receive from the county a charity patient although the county pays for all the charges. In the same way I call the patients we receive from a ward in the church a charity patient, although the Bishop pays the hospital fees. If only the hospital part of it is paid, we call it a charity case. If the doctor's fee is paid, then it is not a charity case. It is a charity case so far as the hospital is concerned, although the hospital fees are paid, because the hospital takes all the fees that it receives and puts them back into the institution for its maintenance and expense, and for upbuilding and to make it better for patients that come there hereafter; no member, director or officer or anybody else gets a cent out of the institution. That is the reason it is a charity institution.

All patients who enter our hospital are charity patients so far as the hospital is concerned. There is no distinction so far as the hospital is concerned whether the party who goes and pays his own way or whether the patient is paid for by the Bishop of the ward or the Church, or the County.

16 As near as it can the hospital aims to collect its hospital charges in all cases. The hospital does not receive patients as a purely charity case with the idea that there is no charge for the patients from any source. When they come there they understand that the hospital fee is to be paid from some source. I don't remember of any case in 1928 who came there and said they couldn't pay for the hospital charges where the hospital has taken care of them. Yes, I

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think I remember of cases where they received treatment without pay.

Q.: Would you give us the names and the time?

A.: I really have to look them up. We had a party come through Wellsville who took sick with Typhoid fever, was taken care of in the hospital. No charge was made. That was about 1917. The name was Smith, I don't remember his first name. I don't remember whether we made application to the County to take care of that charge or not. I think such a case is a County charge and we would accordingly make application to the County to pay it. It depends on the County Commissioners. They have not always paid it. Where we could get the County to pay, we would be very glad to have them do it. The expenses for the X-ray and the laboratory fees are collected as part of the hospital charges, as well as the expenses for the operating table and operating room. The charge for anesthetic is not a hospital charge. The charge for ether is also put in as a hospital charge. The usual charge for the operating room is \$10.00. I am not familiar with the charges for the X-ray. I have been medical director since the hospital was organized. Prior to 1927, it was known as the Utah-Idaho Hospital. Exhibit one are the Articles of Incorporation with the amendments.

Mr. Fonnesbeck: We offer the Articles in evidence as part of the cross-examination.

Mr. Budge: I object to them on the ground that they are incompetent, irrelevant and immaterial.

The Court: Under the pleadings, I deem it immaterial and will sustain the objection.

Mr. Fonnesbeck: Take an exception.

It was then stipulated that the articles might be deemed as read into the record.



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The witness: As I stated this morning, there is no distinction so far as the hospital fees are concerned whether the patient was produced by a member of the staff, or by the ward, or by the County or a club. In all cases the hospital fees must be paid. Although that is a fact, I still consider them charity cases. No matter whether the Bishop paid for the poor patient or who paid, or if it was a charity organization or a church or anybody else, it was considered a charity case. If the man paid his own hospital fees and did not pay the doctor's fee, I would say it was a charity case.

- 22 Although the hospital fees are paid by the patient, it is still a charity case. If, for example, John Smith should bring his wife to our hospital and she should under-go an operation, if he paid the hospital fee for his wife but did not pay for the doctor's fee for the operation, we would consider it a charity case. The X-ray is a part of the hospital charge and is collected  
 23 by the hospital at the time. 75 percent of all the X-ray charges go to Budge Clinic. The hospital pays this percentage to the doctor who operates the X-ray machine because the X-ray is such a technical instrument, and particularly the reading of the pictures that it requires an expert, and the hospital pays him  
 24 that percentage for his services.

Q.: Do all the members of the Budge Clinic partnership share in that fee?

Mr. Budge: I object to that as being irrelevant.

The Court: I think I will over-rule the objection.

- I would say that the money for the X-ray is paid by the hospital direct to the Budge Clinic. The check check does not go to the doctor who works the X-ray.  
 25 Well, it is our way of doing business there, I presume. I don't know exactly what the revenues from the hos-

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pital were for the year 1928. The hospital has nothing to do with the doctor's charge. I do not determine whether it is a charity case depending upon whether or not the doctor's fee is paid. I say that the money paid into the institution, so far as the institution is concerned is charitable. Our ordinary charge per room is \$4.00 a day. Although that fee is paid, I say it is charitable so far as the hospital is concerned on account of the lowness of price all the way through, we charge the same price. I don't know whether they are lower than the Cache Valley Hospital. I am not acquainted with their rates. If a parent brought two children to have tonsils removed and they both occupied the same room, they would be charged a semi-private rate, \$3.25 per day each. If only one child occupied that room alone, it would be a private room.

I do all the operations largely myself in that institution, and have done all these years since the hospital was organized. I make the charge myself direct to the patient for all surgical operations. In that way I use the operating room to a very large extent myself, whenever it is necessary. I do not pay the hospital anything for the use of the room. I have the use of the operating table and all other materials, etc., just the same as in any other hospital. The hospital charges its patients for the use of the operating room. The hospital does not charge me for anything. I take my patients there, the hospital furnishes me with gloves, linen, etc., free. That is true in all hospitals. Other hospitals make the rules and we follow them. That is why I think we are charitable. We are the same as every other hospital in the United States, with one exception; they all charge their patients, every one of them, exactly the same as we do. The exception may be the Children's Memorial Hospital in Salt Lake. They charge them whenever they can pay. The hospital also furnishes and takes care of

all surgical instruments for the doctors. We are also in line in that respect.

All we have to do is to walk in there, and everything is furnished at the expense of the hospital. We make our charge to the patient for the operation, but we do not pay the hospital anything for the use of the table, linens, gloves, instruments, etc.

- 31 Before any hospital was established here, it was necessary, if any operation had to be done, it had to be done in the homes and when I lost a patient, I said, I will leave town before I will do another one in a private residence. There was one restriction in our hospital for major operations. It is a closed institution in that respect. The more experience the doctor gets, the better work he can do for the patient. The other doctors could drift into other lines. The operations in the hospital is controlled by two surgeons, myself and my brother, for the benefit of the patients we have. It is a method in the right direction. I have taken in my brother. Any doctor who will make application to the staff and is accepted will be given the rights and privileges of the institution with the exception of the X-ray and the major surgical.
- 33 Most of the hospitals, particularly in the East, are closed staff like ours. It is of greater financial benefit to me to have a rule like that. I make more, but it is an advantage to the patient. By reason of my experience I would be worth more to the patient. I
- 34 just happened to have been put in that position. I don't consider the Cache Valley Hospital here in Logan a competitor of ours. I don't think that in a hospital we should consider things as being competitive. It is a business in a way. I realize that the success of the hospital depends upon the number of patients the hospital has. Each of the hospitals here own their own building. I don't know whether the Cache Valley Hospital has their's paid for or not. Our hos-

35 pital is paid for. We had a savings account in 1927  
 of approximately \$31,000.00. That was the earnings  
 for the fourteen years prior in addition to paying for  
 the building. It was put into the improvement of  
 36 the hospital, the building and so on.

It is the rule that a charge is made by the hospital against all patients who come there for care or treatment. There have been a few cases I think. I don't recall them definitely to mind now, where nobody was responsible. I mentioned this morning. Right offhand I can't think of any others now. If a party came to the hospital and would say I have no money or means or friends or a dollar on earth we would take him in. I recall the Williams case, who was run over July 4th, 1927. He was a total stranger and had no friends and no money. I didn't take care of him, but I assisted with the case. He was very badly mutilated and broken up by an automobile running over him. I think the hospital called up the County Commissioners and asked them if the County would be responsible for the case. The hospital makes inquiries of the County in those cases. I think the County Commissioners assured the hospital that they would take care of the Williams case. It was a long dragged out affair. I doubt very much that the County has paid now. I presume exhibit one, being a voucher from Cache County to the William Budge Memorial Hospital, showing payment in the Williams case, is all right.

38 Mr. Budge: What is the purpose of this, Mr. Fonesbeck?

Mr. Fonesbeck: To show that the county paid a charity case here and that the man had no friends or relatives here and was unable to pay it himself.

Mr. Budge: It has been conceded that the county paid them; there is no issue on it at all. You can't

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impeach a witness on something that is immaterial. We concede that the county has paid for patients that it has assumed it is responsible for; we don't raise any question about that, and we object to the introduction of these exhibits.

Q.: This man Williams was a total stranger, was he, doctor? A.: Yes, and he was taken care of as such too and given the best care that they could give him, whether they had any idea that they were going to get anything or not.

Q.: You mean he was taken care of just the same as if he was a stranger, do you- A.: Just the same as if he had had a million dollars.

Q.: He was charged the same too, wasn't he?

A.: No.

Q.: Or Cache County was? A.: Cache County; it was taken up through the county commissioners and the case was laid before the commissioners as to the condition of the man and all, and we asked the county commissioners if they would assume the payment of the bill.

Mr. Budge: If your honor please, I object to the introduction of Exhibits 3 and 4 on the ground that they are incompetent, irrelevant and immaterial.

The objection is overruled and plaintiff excepts.

The rule of the hospital is that the members of the medical staff and their dependants are taken care of free of charge so far as any hospital fee is concerned because they teach the nurses. As a business proposition it was the best arrangement that could be  
39 made. It is a thing that hospitals generally do.

#### RE-DIRECT EXAMINATION.

40 We had a superintendent of the hospital during

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the period of fourteen years, while the \$31,000.00 surplus was accumulated. I did part of the work of the superintendency myself during that period. I was the business manager and bought the supplies, etc., of the hospital during that period. I received no compensation for that. At the present time we  
 41 pay the man \$150.00 for this work. We have had no surgeon in this town or county apply for permission to perform major surgical surgery in the hospital. To my knowledge we have not had any doctor apply for membership in the staff who have been rejected.

### RE-CROSS EXAMINATION.

The superintendent we had in prior years was a superintendent and head of the nurses, but I was over and directed her work. Miss Babcock was the superintendent for any years at the hospital under a salary. She acted under my direction. The present  
 42 superintendent does mostly office work, buying and collecting and paying bills. Miss Babcock also did that work, but we were not as large then as we are now. The reason we got the superintendent was to relieve me of the responsibility. We have more patients and more business now. Mr. Larsen, the present superintendent has been under my direction all the time. I have been the main director of the hospital since it was organized. There isn't any doctor  
 43 practicing here now who has come to me and asked if he could come to the hospital and do major surgery. Dr. Hansen has never made an application oral or written at any time. He spoke to me about it. I told him I couldn't decide the question for him and told him to make his application to the staff. When we finished the building the corporation had a debt of \$10,000.00. We paid that off and had a surplus of \$31,000.00 in fourteen years. The new nurses' home

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cost about \$60,000.00, building and equipment. Our present debt is about \$8,000.00.

### FURTHER RE-DIRECT.

44 That money went into the hospital, into the new building, the nurses home. Me and my brother also contributed \$5000.00.

### FURTHER RE-CROSS.

That was not contributed by us in consideration of changing the name to the William Budge Memorial Hospital. I understand the minutes of the board of directors meeting held May 25, 1926, read as follows:

“Doctor D. C. Budge, being present, said that the hospital held a reserve of \$31,000.00 to be used for this purpose, and that due to the honor conferred upon the memory of his deceased father by changing the name to the William Budge Memorial Hospital he and his brother T. B. Budge would donate \$5000.00 as a gift to this fund, increasing it to \$36,000.00.”

I don't say but what the minutes are correct, I would have to refresh my memory on that.

45 PARLEY E. PETERSON, called by plaintiff, testified as follows:

My name is Parley E. Peterson, I am a teacher and incidentally a certified public accountant. I audited the books of the William Budge Wemorial Hospital in 1928. The income of the hospital was disbursed in the ordinary operation of the hospital expenses, interest and debts. There was about \$272.00 which the hospital failed to collect for charges made during the year 1928. The amount of bad debts which had  
46 accumulated for many years prior, amounted to \$254.01, which was charged off in 1928. These were made up of various and numerous items. So far as



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I recall there were no payments made to any officer except the employees of the hospital.

### CROSS EXAMINATION.

- 47 I made an audit of the books of the hospital for 1928, and also the report for 1927. Exhibit 5, and 6, are correct copies of the report for 1927, and 1928. There are a few errors, but they are only minor errors. These items totaling \$272.00 which were not collected is for services rendered for 1928, representing the amount of the hospital charges for various
- 48 individuals. Exhibit 7, represents those various accounts. It is my understanding that the hospital maintains a patrons card for each case that comes into the hospital giving the record of the case. These are the evidence that they have of the charge.
- 49 I can't say whether or not these items are charity, all I know is that they have not been collected. The cards show that efforts have been made to collect these accounts. The bad debts we charged off had accumulated for a number of years, mainly on a number of insufficient checks which the hospital was unable to collect. I suppose if the hospital had an opportunity the officers would collect these checks in the future. That is a common practice to charge off
- 50 debts considered bad debts but nevertheless endeavor to collect them if an opportunity presents itself. The gross earnings of the hospital during 1928 was around \$48,000.00. All that money was collected except the sum of \$272.00. I presume it was a very good business. It probably would be about one and one-half percent loss, I didn't figure it.

Q.: Now how does this record of \$272.00 uncollected out of the gross receipts of \$48,000.00, making about  $\frac{1}{2}$  of 1 percent, compare with other business institutions that you know of.



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Mr. Budge: I object to that on the ground that the comparison is incompetent unless he compares it with like business. He can't compare it with a grocery store or some entirely different enterprise.

The objection is sustained and the defendant excepts.

- 51 A.: I have not checked other hospitals. The net income to the hospital from the X-ray for the year 1928 was \$1414.25; that represents 25 percent of the earnings of the X-ray machine. The X-ray expenses to the hospital as segregated here for 1928 is \$1116.60. That does not include supplies for the X-ray or electric energy charge and other items. These other expenses not listed would undoubtedly be considerable.

#### REDIRECT EXAMINATION.

- This item of \$245.00, which was charged off in 1928, was represented by checks that have been given to the hospital and which have not been honored by the bank. They were checks given for prior  
52 years up to 1928, which had not been paid.

#### DIRECT EXAMINATION.

O. J. LARSEN, called by the plaintiff.

My name is O. J. Larson, I am the superintendent of the William Budge Memorial Hospital, and have been such since July, 1928. The practice of the hospital during 1928, was to receive any and all patients. The hospital makes no distinction as to race, or color poor or rich. We aim to collect from all who are able to pay.

#### CROSS EXAMINATION.

- 53 We always tell them that we expect them to pay the hospital or make arrangements to pay it before

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they leave. During the year 1928, probably about twenty patients left the hospital who did not pay before they left. The total of these accounts amounts to \$272.76. I haven't gone into the facts concerning these parties who did not pay to ascertain whether they were able to pay, or objects of charity. I presume they must have been objects of charity or they would have paid their bills. If there had been any disputes about the bills they have had ample time to come and have those matters adjusted. I have exercised my best efforts to collect these accounts. None of

54 these patients were listed as charity patients. H. B. Johnson has now paid his bill of \$25.00. He was listed on our so-called charity list. I know men who pay their bills, but at times are objects of charity. I sure tried to collect from him. The charges we try to collect are the regular charges that are charged all patients, standard hospital charges. The doctor who operates the X-ray machine receives 75 percent of

55 the X-ray charges collected by the hospital. The check is made out by the hospital to the Budge Clinic that is where we send the money. The hospital pays the Budge Clinic monthly and 75 percent of the receipts from the X-ray, omitting the record which I have in my hand, the Budge Clinic have been paid in full their 75 percent for all X-ray charges collected by the hospital.

The Court: Mr. Larson, does the Budge Clinic receive 75 percent and the hospital retain 25 percent of the gross charges for that work, or 75 percent of the sum actually collected?

A.: Of the sum actually collected.

Q.: Who bears the expense of operating the X-ray machine?

A.: The William Budge Memorial Hospital. The split is taken 75 percent to the Budge Clinic and 25

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percent to the hospital of the gross receipts. The expense of operating the X-ray machine is charged to the hospital. Any money which is later collected for X-ray services the Budge Clinic gets their split of 75 percent.

- 56 Since I have been connected with the hospital, no patients have been received in the hospital, outside of the members of the immediate families of the medical staff, against whom no charges have been entered on the hospital records. This same rule of 75 percent to the doctor and 25 percent to the hospital applies to special laboratory work done at the hospital, and for work which the hospital collects—special scientific work done by the doctor. That is included in the X-ray account and paid to the Budge Clinic. This includes routine laboratory fees which is charged all patients. Any patient who is in the hospital for 36 hours is charged \$2.00 for routine laboratory fee. That is done by the laboratory technician, Miss
- 57 Peterson. Other laboratory work comes under the classification of specialist work, except tissues sent away for examination by other laboratories.

- 59 I have a list of the stockholders of record.

Mr. Budge: Just a moment, I object to that as being incompetent, irrelevant, and immaterial.

The Court: Well during the recess, I have been checking over the pleadings a little closer with respect to that issue, and in paragraph 1 of the further answer, it is alleged that the corporation was organized for the purpose of carrying on the hospital business for pecuniary profit and gain. The reply admits the allegations of paragraph one, with that exception and there is a denial of that allegation. There is that issue raised by the pleadings. It may not be material issues as Mr. Budge has contended, but inasmuch as the issue is raised under the pleadings, I feel in-

clined to change my ruling and receive the articles of incorporation in evidence, in proof of that issue made by the pleadings. I am not prepared exactly to say it is altogether a material issue, but I am inclined to think it is immaterial, but there is that issue raised by the pleadings.

Mr. Budge: But it is stipulated into the record already.

The Court: Well I think I will stand by the ruling that it is material and over-rule the objection.

Mr. Budge: Take an exception.

Mr. LORENZO HANSEN, called by the plaintiff, testified as follows:

My name is Lorenzo Hansen. I am president of the William Budge Memorial Hospital. Have been such for five years. I am familiar in a general way with the affairs of the hospital. The policy of the  
60 hospital is to receive everybody. We aim to collect from everybody that is able to pay. No compensation was paid to any director or other officer of the hospital in 1928.

### CROSS EXAMINATION.

I do not know of any position Dr. J. W. Hayward holds with the hospital except as a member of the medical staff. Dr. D. C. Budge is medical director and chairman of the medical staff. I can not say as to any specific case where the medical staff have referred any question to the board of directors. I have  
61 been vice-president under Mr. Anderson since the hospital was founded.

62 The board of directors have concurred in the internal policy formulated by the medical staff.

Q.: Are you acquainted with the fact that the Articles of Incorporation, Article 9, gives the medical director and his associate the power to choose the medical staff without the board of directors?

Mr. Budge: I object to that as being incompetent, irrelevant and immaterial. The articles of incorporation are not before the court.

The Court: I will sustain the objection to the question because the Articles are not in evidence. Defendant excepts.

Q.: Are you familiar with the provisions of article 9 of the articles of incorporation?

Mr. Budge: I object to that as being immaterial. Objection is sustained, and defendant excepts.

63 Q.: Do you know how the medical staff was chosen?

Mr. Budge: I must object. Objection is sustained and defendant excepts.

Q.: What do you know about the policy of the hospital to inquire into the financial ability of each patient as he enters the hospital?

65 A.: I don't know how they do that. No, I don't know anything of it of my own knowledge. Yes, I have personal knowledge. There was a case up there last November where Dr. D. C. Budge brought a woman to the hospital who had got her back broke. They attended her and no bill was rendered. Dr. D. C. Budge told me so. It is a known fact, and we all went up there and saw the woman. I don't go around and inquire of the patients how they came there, or who brought them in. I learned about this case from the staff and the nurses, and others that were there. They didn't impress me intentionally with that case.

66 I don't think so. I can recall another case, the Bankhead case where the patients were taken in without

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any questions being asked. They were surely taken there before they could ask questions, some were dead and some dying.

67      WILFORD RAWSON, testified for the plaintiff as follows:

My name is Wilford W. Rawson. I reside at Ogden, Utah, and am Superintendent of the Thomas Dee Memorial Hospital. It has 185 beds. I am familiar with the management of other hospitals in this state. Our hospital is a member of the American Hospital Association.

68      We meet once a year. There is a difference between a technician and a radiologist. A large number of the hospitals pay a commission to the radiologist who operates the X-ray machine. From 60 to 80 percent. They find this more economical than to employ a full time radiologist. About 60 percent of the smaller hospitals employ these men on a commission basis running from 60 to 80 percent commission. Hospitals are either built by some church, or some private people, citizens or counties. Where they do not collect their bills, they have to depend on endowments or donations or collections from some source to maintain the institution. In our hospital conventions this question is constantly brought up and it has been the unanimous opinion that hospitals should attempt to collect all that is possible to collect from the patients to maintain those institutions. In many cases hospitals have patients who are unable to pay, who have to be taken care of, and for that reason it is recommended that the prices charged shall be placed at a figure at which each institution can be maintained, including the necessary improvements. It is my opinion that all hospitals collect from their patients as far as possible.

## CROSS EXAMINATION.

- I could not say that the other hospitals furnish the machine and keep the machine up on the 25 percent going to the hospital. The main work of the radiologist is to interpret the pictures for the doctors who do not understand them. I would say that some doctors are unable to read X-ray photoes, and another thing, the industrial companies insist upon the hospital have a radiologist. Radiologists may bring out many things that an ordinary doctor would not see.
- 72 He isn't competent to interpret X-ray pictures, it is a profession of its own. Two heads are better than one. The X-ray is placed in the hospital to assist the doctor. I could say whether the radiologist stands the expense of upkeep of the machine. I didn't inquire as to that. I only know what I have been told.
- 73 The average expense for an X-ray plate would be around \$1.25, and the patient is usually charged \$10.00. In our hospital we gage our prices from the industrial commission rules. They vary from \$5.00 to \$25.00 for an X-ray picture. I don't know whether the rate charged by the Budge Memorial Hospital is legitimate or not. It is none of my business. I would
- 74 imagine a picture of the stomach would cost about \$8.50, actual expense, and the patient would be charged about \$25.00. A picture of a broken leg or arm, etc., the actual expense would be about one-fifth of the charge made to the patient. The actual cost of an X-ray machine varies. The one installed in our hospital cost around \$8000.00. Occasionally there are new equipment and improvements to be added to the machine. I have not gone into the costs of patients of the Budge Memorial Hospital at all. I don't
- 76 know that their books show a net gain each year. I don't know that their books showed a surplus in 1927 of \$31,000.00. I did not know that the hospital has been paying taxes each year up to 1928. I know the



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- majority of other hospitals as a general rule do not pay their own way. Whenever we make improvements on our hospital we have to have assistance from the Church. The church owns the Dee hospital and builds the improvements. Generally speaking, the rates here in the Budge hospital are lower than the rates in other hospitals elsewhere. I do not know what the rates are in the Cache Valley General Hospital in Logan. The rates in the Dee Hospital are
- 77 about the same as the rates in the Budge Hospital. Our \$5.00 and \$6.00 rooms are special rooms. We have 22 private rooms at \$3.50, 38 rooms at \$4.00. I would say that it is the duty of a hospital to take care of patients until he is able to leave the hospital. But a hospital always discharges the patient when the doctor signs his discharge. We don't keep people there longer than the doctor desires them to remain,
- 78 even though they want to stay. I appeared before the Cache County Commissioners on behalf of the Budge hospital for reduction of taxes.
- 79 I have not checked on the Cache Valley General Hospital in Logan because it has not been passed on by the American College of Surgeons. I don't deal with any except A grade hospitals. I stated before the County Commissioners last fall that if they taxed this hospital it would give the State a black eye. I knew then that this hospital had been taxed each year up to the present time. I don't know anything
- 80 about the financial expenses of the Budge Memorial Hospital. I have checked their records and know the treatment they give their patients. I have noted that the doctors write the orders on the charts for the nurses and the nurses carry out the orders on the
- 81 charts. When I talked to the County Commissioners last fall, stating that no hospital in this state paid their way. I referred only to class A hospitals. In regard to the turning down the hospital by the State



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Nursing Association, permit me to say that it was reported to me that some of the girls who were graduated here were not taking their examinations. That is the State Board Examination. I investigated the case personally and found that the girls who had not taken the State Board Examination had gone to other states and that was reported to the State Nurses Association and they corrected their record, or they told me they would.

82 Dr. D. C. BUDGE, recalled by the plaintiff.

In regard to the case at Richmond which I brought to the hospital, there had been an auto accident, a woman and a child were seriously hurt and all covered and smeared with mud. I brought the woman to the hospital for treatment without asking any questions, her spine was found to be broken, and we put her in a cast and took care of her and the child. The Franklin County Sugar Company for which company her husband was working sent a check to more than cover the hospital bill. We paid the balance back to the woman. The doctor's fee was charged off. With reference to the \$31,000.00 spent for improvements, we could spend 40 or 50,000.00 more there and it would be a fine thing for the people of this county.

83 CROSS EXAMINATION.

I am in the habit of extending such generous treatment to patients as I have just described. I do not recall Mrs. Emma Davis of Preston, who had two operations at the hospital in 1928. I do not always remember the patients I operate on. I can't remember the names of all the people I operate on. The fact that she had another appendicitis case at the hospital last September for which she was charged \$189.00 does not help me to recall the case. It may be true

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that on the first case she paid \$12.00 and still owes the hospital another \$50.00. She may have asked me for a reduction in these cases. I know Mrs. Emily R. Richards who is now in the hospital and that the Relief Society are trying to take up a donation in the ward to pay her hospital fees.. We have refused to cut anything on the hospital fees in her case. The Relief Society are taking care of the hospital fees. I am acquainted with Mrs. W. J. Callan, a stockholder who lives in Preston. I know she is a widow. Her oldest son may have been in the hospital in 1927 for an operation and died there. I don't remember that she spoke to me about getting a reduction in the hospital fee. She may have done. I don't remember. If I told her anything, it probably was to pay the hospital and if there was any discount we would do it on the doctor's fee. I don't say but what she paid the hospital and doctor's fees in full. Her son may have died in the hospital.

85 Q.: These cases where you have required the fees to be paid, you don't recall them do you?

A.: Well, I don't recall all of these matters. No.

Mr. Budge: I object to this testimony as being immaterial and not proper cross examination. We will admit that we collected all the fees they were able to pay and that we collected all we can, and that the hospital uses its best endeavor to collect its charges.

The Court: We could spend all day in going over these kind of cases. I don't want to spend all that on this kind of evidence, because there is no controversy about that.

86 Q.: Isn't it a fact doctor that when the hospital was organized you went out and got subscriptions and promised the stockholders a reduction of 12½ percent on their hospital fees.

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Mr. Budge: I object to that as being incompetent, irrelevant and immaterial. The objection is sustained and defendant excepts.

Mr. Fonnesbeck: Let the record show that we offer to show that at the time the stock was subscribed by the various stockholders in this institution, representations were made by the witness and others affiliated with him in the construction of this hospital to the parties who subscribed the money to build this institution, that they and their immediate families should, in the future, receive a reduction in case they entered the hospital of  $12\frac{1}{2}$  percent of the hospital fees.

Mr. Budge: We object to that on the grounds that it is incompetent, irrelevant, and immaterial. The objection is sustained and defendant excepts.

Fr. Fonnesbeck: We also offer to show that the representations were made to the stockholders that the hospital would be a paying investment.

Mr. Budge: Same objection to that. The objection is sustained and defendant excepts.

87 In repard to holding patients in the hospital until the fees are paid, I testify that when patients come there the people who are responsible have been told that the hospital bill should be paid by the time the patient leaves the hospital. When the day comes for them to leave the hospital others are sometimes sent to take them and we have held the patient explaining that we better see the original party. That has not happened many times. I don't know whether the patients have felt that they were encaged, it is up to them to say how they felt. We never impressed them that way. I don't know of parents of children held in the hospital ever consulting attorneys on habes corpus proceedings to get their children out. As a general rule we haven't had but a very little trouble

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with our patients. We impress them to pay their bills at the proper time. When the patient comes in he is given the rules and regulations of the hospital which requires among other things that the fees must be paid. If it is agreeable with the patient they pay in advance, otherwise it is satisfactory if they pay before they leave the hospital. I don't know about Anthone Skanchy's wife being held at the hospital until the fees were paid. I know I. P. Peterson. He was simply informed of the rules and regulations. Mr. Peterson didn't understand the situation and he felt quite offended. He talked with me about it. I would say that only on rare occasions do we ever require the patient to stay because he couldn't pay. I know James Peterson of Newton, and remember of him having his daughter there and of him and his wife coming over to get his daughter. But Mr. Peterson entirely understood it. I don't remember about the girl being detained and couldn't go home with her parents because they didn't have the hospital fees with them. She was released after there was an understanding that he should pay the bill, that we would like to have him pay the bill. We never imprisoned anybody. Our policy is the same now as it was in 1928, and 1927, and prior years. Our policy has always been to collect whenever the people are able to pay. It is our policy to collect from everybody all the time, from those who are able to pay. I graduated from the Dental Department of the Lake Forest University at which time I was assistant to the chief surgeon of certain surgery of the face, head and mouth. After which I graduated from the Rush Medical. I did not enter the Dental school because of lack of credits.

PARLEY PETERSON, Recalled by the plaintiff.

I gave the impression yesterday that probably

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there might be additional expenses which have not been segregated to the X-ray account in addition to that shown. I find in that particular I was mistaken. The expense of \$1116.60, is specified films, with the exception of \$6.00.

### CROSS EXAMINATION.

In regard to supplies I find that the only supplies for the X-ray would be films. That is the direct charge to the X-ray account. That is all that has been charged to the X-ray account, and I think it includes all direct charges. I am not saying that the hospital does not have some other additional X-ray expenses, for instance, overhead, electricity, etc.

O. J. LARSEN, Recalled for further cross examination

I can not say whether the State corporation license tax for the years 1927, 1928, 1929, have been paid.

Q.: Have you paid to the office of the Secretary of State the annual corporation tax?

Mr. Budge: I object to that. The Court has ruled that that is immaterial. The character of the institution has been ruled on.

The Court: The objection will be sustained.

Mr. Preston: Take an exception. Let the records show that we offer to prove by the witness Larsen, that the corporation tax was paid during the year 1928.

Mr. Budge: To which we object on the ground that it is immaterial. The objection is sustained and defendant excepts.

95 A. G. LUNDSTROM, called by the defendant.

My name is A. G. Lundstrom. I am Mayor of Logan City. I was one of the original 25 men to get the hospital, and took a fairly active part in it the first

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few years. When I heard that the William Budge Memorial Hospital had been taken off the tax rolls in the spring of 1928, I called a meeting of the City Board of Education and the City Commissioners. We talked this matter over and felt that it was unfair. We filed a written protest with the County Commissioners.

Mr. Budge: I object to that as being immaterial. The objection is sustained and defendant excepts.

96 Q.: After this case was commenced did you take occasion to write to the stockholders of the hospital and ask them to answer a questionnaire which you enclosed?

Mr. Budge: I object to that as being immaterial.

Mr. Fannesbeck: We offer to show the understanding and the policy so far as the stockholders of this corporation understood it and also with reference to the charges to be made against the stockholders and their families as patients.

Mr. Budge: I object to that as incompetent, irrelevant and immaterial. The objection is sustained and defendant excepts.

Mr. Fannesbeck: Let the records show that we offer to show by this witness that 95 of the stockholders of the William Budge Memorial Hospital answered the letters sent out by the Mayor of this city.

97 The Witness: The letters which you hand me are the letters I received back from the stockholders. have been in my possession all of the time since they were received in the mail. There are 95 in all.

Q.: I will ask you to state, Mr. Lundstrom, what the stockholders answered in answer to the question whether or not the hospital was a charitable institution.

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Mr. Budge: I object to that as hearsay, and incompetent and on the further grounds that the stockholders' construction as to what is charitable is incompetent. Objection is sustained and defendant excepts.

98 Mr. Fonnesbeck: We offer the answers of the stockholders in evidence on the question whether or not the hospital is a charitable institution. Also upon the further question of the agreement by the founders of the hospital with the stockholders that they should have a 10 percent discount on their hospital charges.

Mr. Budge: The objection is sustained and defendant objects.

Mr. Fonnesbeck: May these be marked as one exhibit.

Mr. Budge: Why don't you select one of them and offer that as a sample?

Mr. Fonnesbeck: That may be agreeable, it may be marked as exhibit 9.

The Court: The objection has been sustained and they are marked for identification.

ALBAN T. CLAWSON, called by the defendant testified as follows:

My name is Alban T. Clawson. I am a County Commissioner of Cache County. The property of the hospital was first placed upon the tax rolls.

Mr. Budge: I object to this as being immaterial in view of our statement.

The Court: I think it is immaterial.

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99 C. V. MOHR. called by the defendant testified as follows:

My name is C. V. Mohr. I am the County Clerk and ex-officio County Auditor of Cache County. Statements and bills for hospital services for poor patients have been presented by the William Budge Memorial Hospital against Cache County for the year 1928, and prior years. These statements and bills so presented by the hospital have all been paid to the hospital as presented. These bills have been paid out of the relief of the poor fund. The bills were mailed from the hospital direct to the County Clerk's office, and the claims were made out and approved by the County Commissioners at the following session and  
100 in that manner the County has taken care of all bills presented by the hospital for poor patients treated at the hospital. I recall the Williams case. The County paid the hospital on that case \$384.50. That is just the hospital bill alone.

### CROSS EXAMINATION.

The method of presentation and allowance of bills for the County indigent is as I have explained here, so far as the hospital is concerned. Sometimes the hospital would call and they would say, "We have a county case here that needs to be taken care of, what do the Commissioners say about that". I don't remember the amount which the county paid to the hospital in the year 1928. I could get it in a very short time.

ANTHONE L. SKANCHY, testified for defendant  
102 as follows:

My name is Anthone L. Skanchy. I am 27 years old. My wife was at the William Budge Memorial Hospital in 1926, and again in 1928, when she died



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there. In 1926, she was there on a confinement case. I sent my wife's sister and brother to get her. I was busy in Ogden and Salt Lake on the road at the time. The hospital wouldn't release her until I came over and paid the chick. I was called on the telephone by the hospital to come over there and pay the hospital bill before she would be released. I came and I was  
103 provoked about it because I thought being a resident of Logan and a home owner, that my credit would be good enough. That they could release my wife and I could go over and pay the bill, but they refused, and my folks insisted that I should pay the check, which I did, and she was released. In 1928, I had my wife there again on a confinement case, at which time I lost her and the baby. At that time I wasn't satisfied with the service I got, but as soon as I feel satisfied I will pay the bill that they have charged me for. The last time she was there only eight hours. My financial condition is such that I need no charity.

104

## CROSS EXAMINATION.

I talked to Miss Larsen, she is the one that met me and the one I spoke to when I went to the hospital about midnight. I think another nurse who was there was Miss Wilcox. I was called by Miss Larsen to come up to the hospital. The notice said I would have to pay my hospital bill before the wife would be released. That was the summons that I got. I  
105 became provoked like most any man would be. I didn't know that my credit wasn't good enough for 24 hours or a week or two weeks. My wife had been there about two weeks the first time. I had been up there a number of times while she was there. I didn't understand that the hospital bills were payable before she was taken away. I didn't see any notice to that effect. Mr. Larson told me the confinement case  
106 would be \$50.00 for hospital charge. I assumed it

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was payable just as any other business matters would be. It provoked me that they wouldn't release my wife until they had been paid. I had to drop my business and go over to the hospital. That was what riled me. The thing that riled me was that  
 107 they demanded that I come over there before my wife would be released, and they wouldn't let her go before I came over. Now that was in the afternoon and she stayed there till I came and paid the check. I am still sore about it. I made up my mind that I wouldn't send her back to that hospital again, but I had Dr. McGee the second time and he insisted on her going to that hospital

108 C. J. BALM, called by the defendant:

My name is C. J. Balm. I reside at Smithfield. On the 14th day of January 1929, I was called by Dr. G. L. Reese, in regard to a case of the plaintiff hospital involving George Pitcher, a resident of my ward.

Mr. Budge: I object to it as being incompetent, irrelevant and immaterial. The objection is sustained, and defendant excepts.

Mr. Fonnesebeck: We offer by this witness to show that the witness and the president of the Stake were called by a member of the staff of the William Budge Memorial Hospital to sign a written guarantee, guaranteeing the payment of the hospital bill. The objection is sustained and defendant excepts.

109 ELIZABETH BAHAN.

My name is Elizabeth Bahan, and I reside at Paradise. I am the president of the Relief Society of Paradise. Sometime during the latter part of 1928, Dr. Baird of Hyrum, called me on the telephone in reference to the tonsils and eye operation of the Goldsberry children. He stated that the church or the Relief Society would be expected to pay the hos-

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pital bill. I referred him to the Bishop. Dr. Baird has informed me that in a tonsil case, we would be expected to pay \$5.00 hospital fees. I called Dr. Baird in regard to a worthy poor that we had in our ward for medical and hospital attention. He told me that he thought it could be arranged by paying the hospital fee.

## 111 JAMES C. PETERSON.

My name is James C. Peterson. I reside at Newton. Members of my family have been in the hospital at different times. In 1928 my wife was ailing. She was under the special care of Dr. S. M. Budge. Finally Dr. Budge thought probably a change of doctors would be beneficial, so he turned her over to Dr. Hayward. The doctor said she would have to have an operation. She said, do you really think doctor, that I will not get well until I have an operation. He said, I certainly do. Then we began to talk operation to him, and he, knowing our standing with the doctors went in consultation with other doctors in the office, in the Budge Clinic and returned and said we can only operate by having the money forthcoming before we operate. It was stated that all money should be forthcoming for the hospital and the operation. As a result my wife did not enter that hospital. My wife was in such condition that she had to receive hospital attention. She did go to the Cache Valley Hospital, and was operated on.

## 112 CROSS EXAMINATION.

We expressed ourselves as feeling rather bad or put out that we had to be turned down. I called it being turned down. I did owe the hospital at one time, but not now. For a number of years I did my

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113 banking at the Farmers Banking Company at Cache Junction. That is my signature on the plaintiff's exhibit B, check given to the hospital which was returned "no funds". It hasn't been paid yet.

RE-DIRECT EXAMINATION.

114 My financial condition has been low the last two years. I had a set-back. I have made that known to the hospital officials. I had my daughter up at the hospital in 1923.

Q.: I will ask you to state what the fact is in regard to the hospital officials refusing to let your daughter leave the hospital before the account was paid.

Mr. Budge: I object to that as assuming there was a refusal, it is too remote, and is incompetent, irrelevant and immaterial. Objection is sustained and defendant excepts.

115 Mr. Fonnesebeck: Does the court rule then that the court will not permit any testimony prior to 1927? I have a number of witnesses subpoenaed who will testify as we now offer to prove by this witness that his daughter was detained and refused permission to leave the hospital, and we have witnesses subpoenaed who are here to testify on that same issue covering all of the years from 1928 back eight to ten years. I will say to the court that the witnesses were subpoenaed and are here now to testify on that issue in pursuance of the express issue made in the pleadings not only by the complaint and the answer but also by the reply and the affirmative allegations of the reply to the affirmative allegations in the answer. We feel that it is in issue here and that the court should take into consideration all of these facts to determine whether or not this hospital has a policy of holding the patient until

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they collect the hospital fees, irrespective of whether or not the patient is able to pay. We want to show that such is the case, and your honor realizes it is very difficult in a case of this kind to know who the people are who have had these experiences for such a short time, if the issues are to be confined to the years 1927 and 1928. Had the issues been so narrowed in the pleadings and had counsel made his objection and moved to strike this part of our allegations for the years prior to 1928, so as to give the court an opportunity to fix those years, so that the defendant might have known the exact issues then, we would have made stronger efforts to get the witnesses on those last two years; but as it is all the years prior thereto are put in issue, and it is not fair that counsel insists now that this testimony is immaterial, and particularly in view of the testimony of Dr. D. C. Budge, the medical director, and the admission that the policy has not been changed at any time in this respect.

The Court: That testimony would be merely cumulative. You have offered some evidence touching that point and sufficient to get into the record your theory, and it would make no difference how many witnesses you called, I think it would be cumulative. I have given some latitude in permitting you to inquire into the year 1927 and immediately preceding 1928, but I think to go further back than that would be too remote. So that on the two grounds I will sustain the objection that it is incompetent and it is cumulative.

Mr. Fonnesbeck: Note an exception. May the record show that we call at this time Mr. and Mrs. H. M. Mortensen, Alma Jessop, C. M. Hammond, James E. Hansen—I will also give their residences. Mr. and

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Mrs. Mortensen live at Smithfield, Alma Jessop lives at Millville, C. M. Hammond at Providence, James E. Hanson, also at Providence, John R. South at Logan, and Mrs. James C. Peterson, the wife of this witness on the stand. May we have this offer as to the years prior to 1928?

Mr. Budge: We object to the offer on the ground it is incompetent, irrelevant and immaterial and too remote.

The Court: The objection will be sustained. It is incompetent and immaterial and merely cumulative in its nature.

Mr. Fonnesbeck: Note an exception. That is all.

H. B. JOHNSON, called by defendant testified as follows:

- 116 My name is H. B. Johnson, I reside in Logan, I am on the list as owing the hospital \$25.00, designated as stomach service. It is for X-ray. The only reason it has not been paid, is I felt it was excessive.

#### CROSS EXAMINATION.

- 117 I was able to pay it but haven't paid it until within the last day or two, because I felt it was somewhat excessive. I did not go to see any one about it.
- 118 V. D. GARDNER, called by defendant, testified as follows:

I am assistant professor at the U. A. C. I teach accounting at the College. From an examination of the books and records and the annual statements of the hospital I have prepared the statement of Sources and Application of Funds, Exhibit 10, it covers the period from December 31, 1921, to December 31, 1928.

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Mr. Fonnesbeck: We offer Exhibit 10 in evidence.

Mr. Budge: I object to it on the ground that it covers an eight year period.

119 The Court: I will permit you to go into the matter for 1928, but the objection will be sustained in its present form.

Mr. Fonnesbeck: Note an exception. I will offer it for the year 1928.

The Court: I think that should be shown separately by a separate document.

Mr. Fonnesbeck: Then for the purpose of the record may Exhibit 10 be deemed read into the record.

Mr. Budge: It may be stipulated that it is copied as an exhibit into the record, but not admitted.

I examined the accounts of the Budge Clinic with the William Budge Memorial Hospital, and I present the facts founds in summary form, Exhibit 11. This is taken from the ledger at the hospital. I prepared it for the years 1928, back to 1925. I find a total credit to the Budge Clinic of \$6170.06 for the year 1928, which means that the hospital held itself responsible to the Budge Clinic for that amount for the  
120 year 1928. For the year 1927 it was \$3604.56, for the year 1926 it was \$3988.40. For the year 1925, it was \$2364.10. Exhibit 11, is offered and accepted in evidence over plaintiff's objection, Exhibit 12 is offered  
121 and accepted in evidence as a report of the year 1928, over objection of the plaintiff corporation. Exhibit 13 is offered and accepted in evidence as a report for the year 1927, over plaintiff's objection.

When I went up to the hospital the first morning to check on the books I asked Mr. Larson for a list of the charity cases. Mr. Larson said he had a list. I prepared a list from the actual card system they

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have at the hospital. I copied it down from the cards. The total amount which was not collected for the year 1928, is \$272.76. For 1927, the accounts uncollected total \$459.25. They are largely X-ray accounts, as appears from the cards.

122 Exhibit 14 is offered and accepted in evidence for the years 1927 and 1928, over plaintiff's objection.

In the last column of exhibit 14, indicates that statements have been sent out in an effort to collect these accounts, for instance 10, 11, 12, 5, 7 and so on are the number of letters that Mr. Larson said had been sent in an effort to collect these small respective accounts. For the year 1927, the accounts not collected compared with the volume of business done and paid amounts to .57 of one percent.

### CROSS EXAMINATION.

Exhibit 11 shows the credits to the Budge Clinic for X-ray services. In a few cases it also shows collections of the doctors bills by the hospital for the doctor. I think there are only four instances of that  
123 kind in Exhibit 11. In the 1925 analysis, the amount includes the totals. I did not analyze. I did not analyze the items making up these totals. The general credits are of two natures, credit for doctors bills collected as an accommodation at the hospital, and the credits arising from the cash book posting from column headed "Doctors Fees" which are a distribution of fees collected from X-rays and laboratories. So far as my examination goes, it appears that the item of \$136.75, and the \$4.00 item are the two main items which are not laboratory and X-ray fees, payable to the doctors. During the year 1928, the hospital actually paid the Budge Clinic \$5698.53.



125 L. P. PETERSON, called by the defendant.

I am a stockholder in the William Budge Memorial Hospital. As such stockholder, I made demand upon the hospital officials to inspect their books. I talked to Dr. D. C. Budge at the time.

Q.: What was said by him in regard to the amount paid for the X-ray machine?

Mr. Budge: I object to that as incompetent, irrelevant, and immaterial. Objection sustained and defendant excepts.

Q.: Has your wife ever been held at the hospital for ransom? A.: Yes.

Mr. Budge: I move to strike that out. Motion is granted and defendant excepts.

126 She was at the Budge Hospital. It was seven years ago.

Mr. Budge: I object to it as incompetent, irrelevant and immaterial. Objection is sustained and defendant excepts.

Dr. D. C. BUDGE, Recalled for further Cross-examination.

We have three graduate nurses at the hospital in addition to those taking training. The plaintiff's card, Exhibit A reads "The charges for graduate nurses are extra and are payable direct to them by the patients." That is where the patient desires outside nurses. We have undergraduate nurses who are taken out on private cases by the doctors, but that is for teaching purposes. It may also be helpful  
127 to the doctor, but the purpose is to give the nurses training. They are taken out to assist the doctor and for teaching purposes.

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Dr. E. L. HANSEN, called by the defendant.

My name is E. L. Hansen. I am a physician and surgeon and reside at Logan, Utah. I have been practicing here for two and one-half years. When I came to Logan I had a talk with Dr. D. C. Budge, in regard to practicing in the Budge Memorial Hospital. I had more than one such conversation with him. The first one was in the summer of 1926, in the month of August, shortly after I returned from the East. He invited me to come to the hospital, and I went up there and watched Dr. Budge operate one morning. Dr. Budge said he wanted to talk with me, 128 so he took me along with him through the hospital while he did his surgical dressings, in the various surgical cases. After that he took me down-stairs and showed me the kitchen, nurses dining room, etc. He stated that the policy of the hospital was definitely established. That they had their organization there along with the clinic organization of doctors, that their policy was definitely laid out, that they had divided the field among the members of the Budge Clinic. That he, himself, was doing the surgical end of the work in major surgery. He said, "Dr. T. B. is doing the tonsils and throat work". He said that as far as the field of major surgery was concerned that he was handling that himself. Other members of the clinic were doing general practice. I said, "Well then, you don't allow any one else to come in and do major surgery in your institution." He said nobody else, because it is the man who is doing the thing constantly and whose mind is constantly on those things who is the most competent. That any one doing surgical work occasionally was not qualified. I was given to 129 understand that very plainly. I was told that the field was closed so far as major surgery in that institution was concerned, to one man, and that was Dr. D. C. Budge himself.

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Plaintiff moves to strike testimony. Motion denied, plaintiff excepts.

I had other talks with Dr. D. C. Budge, subsequent to that. The second conversation was in the fall of 1926. It related to circumstances of a patient whom I had on the College Hill. Dr. D. C. Budge was called in as a consultant by the family. I phoned and told  
130 Dr. D. C. Budge that I did not think it was very proper to take a patient to his hospital where he had only been called in as a consultant with me, and that inasmuch as it was an acute appendicitis case an operation might be performed and I told him that I should be permitted to take part in the operation, but Dr. D. C. said that that could not be allowed. The next time I talked with Dr. D. C. Budge was in the Bluebird, subsequent to the last conversation. Dr. D. C. requested me to come to his office, he wanted to talk with me. Dr. D. C. again reiterated his stand that the hospital was closed as far as any one else doing major surgery was concerned. That if I had not associated myself with the Doctors with whom I was associated that they, the Budge Clinic, might have seen fit to invite me in to do some branch of their work, but surgery was excluded from that. He said he considered that nobody was competent in Logan to do the work which was demanded in the field of major surgery, except himself. I graduated from  
131 Brigham Young College, and the Agricultural College, and obtained a Bachelor of Science degree and medicine at the University of Louisville, Kentucky, an A grade school, and I have had in addition to that two years of routine work, twelve months each in the Louisville City Hospital, a hospital of 450 beds, in a city of 350 thousand population, and one year internship in general work; that includes medicine, obstetrics, pediatrics, psychiatry along with four months in the field of surgery, and one year in surgical training

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in St. Elizabeth Hospital in Louisville, Ky., of 200 beds. I spent two and one-half years in the medical department of the U. S. army and have had special short courses in Cleveland Ohio, in Philadelphia, and with John B. Beaver, and at the Massachusetts General Hospital in Boston. I have never made any written application to the Budge Clinic or Dr. D. C. Budge to practice in the hospital because I understood plainly and emphatically from Dr. D. C. Budge that there was no opportunity to do that work, and that there was no need of making any application. I said to Dr. D. C. Budge, that seemed to be a method of restricting surgery absolutely to one man, and that therefore it was a means evidently established to prevent any other man from developing in the field of major surgery. I told him that I considered myself  
 132 qualified and I intended to practice major surgery that if he wanted to prevent me it was all right for him to try. Of course, he said he wouldn't attempt to do anything like that. I am more or less familiar with the Budge Clinic and their relation with the William Budge Memorial Hospital.

Q.: I will ask you what is the fact as to whether or not that hospital is operated for the benefit of the Budge Clinic and the members affiliated with it?

Mr. Budge: I object to that as being incompetent, irrelevant, and immaterial, and calling for conclusion. Objection is sustained and defendant excepts.

Q.: Does that result in a large financial profit and gain to Dr. D. C. Budge?

Mr. Budge: I object to that, it calls for a conclusion and the witness is incompetent to answer. Objection is sustained and defendant excepts.

I am connected with the Cache Valley Hospital. It has been operating in its new building since November 15, 1928, prior to that time it held forth at 172 North Main street, in the Arimo Building. We have

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30 beds. I am a member of the staff of that hospital. It is a corporation owned by stockholders.

Q.: And is that institution in competition with the William Budge Memorial Hospital in business?

Mr. Budge: I object to it as calling for a conclusion. Objection is sustained and defendant excepts.

Q.: Did your hospital pay taxes for the year 1928?

Mr. Budge: I object to that as immaterial. Objection is sustained and defendant excepts.

Mr. Fannesbeck: We offer to show by this witness that he did pay taxes for 1928. Objection is sustained and defendant excepts.

Q.: What do you know about the rates, Dr. Hansen, of your hospital, as compared with the William Budge Memorial Hospital?

Mr. Budge: We object to that as incompetent, irrelevant and immaterial.

The Court: The objection will be sustained. It appears **there is another** hospital operating in this vicinity, and I think that is all you are entitled to.

### CROSS EXAMINATION.

I did not tell Dr. D. C. Budge in a conversation in his office, that ours was a general hospital, that we would not permit Dr. Jones to practice there. I have had four months experience in surgery in one place,  
 134 in the Louisville City Hospital. That was not my first experience in the practice of surgery. I was at the St. Mary's Elizabeth Hospital prior to that, in actual operations in surgery. I did some of it and assisted in other. My experience in the army was surgical work principally and operative technique. I was assigned to the medical branch in the army, in the Medical corps of the 20th U. S. Infantry. I didn't do the operations myself, but I assisted. I had the assistantship responsibility. I had the primary responsibility in the Louisville hospital, and in the other hos-

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pitals I have named. I graduated in 1925. I was in the army and that experience was before I graduated. I came here in August 1926.

135 Mr. Fannesbeck: Now, if the court please, our affirmative allegations of paragraph 1 of our answer are that the plaintiff corporation was organized on the 24th day of April 1914 for the purpose of carrying on a hospital business for pecuniary profit and gain, and in pursuance of the issue made by that allegation and the express denial made in the reply of the plaintiff in paragraph 1 wherein the plaintiff alleges and admits that the property described in  
136 paragraph 2 of said complaint, together with the building thereon, belonging to the plaintiff, and that the plaintiff is a corporation organized for the purpose of carrying on said hospital business for pecuniary profit and gain—in pursuance of that issue we offer the articles of incorporation as showing that the plaintiff is a corporation, owned by stockholders and is organized as corporations are organized under the laws of our State for pecuniary profit and gain, and not as a corporation organized not for pecuniary profit; and I will read the court's opinion in the Gitzhofen case, 88 Pacific, 695, where our Supreme Court discusses this particular point.

Mr. Budge: I object to the offer on the ground that it is incompetent, irrelevant and immaterial.

The Court: I believe that what Mr. Budge has said in the main his argument, if the Court should find that this corporation was organized for the purpose of gain and profit, there is nothing to prevent the court from still finding that it is operated as a charitable institution, that is, that the property of the plaintiff is used for charitable purposes. But in support of your affirmative answer I feel inclined to overrule the objection and receive the articles of incorporation in evidence to permit the court to make

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a finding on that issue, which is made an issue by the pleadings. I may decide yet that it is a material issue; I prefer to overrule the objection and receive the exhibit in support of the defendant's affirmative answer. So the articles may be received in evidence.

137 Mr. Budge: Take an exception to the ruling.

Dr. SCOTT M. BUDGE, called by plaintiff in rebuttal testified as follows:

My name is Doctor S. M. Budge, I am a member of the Budge Clinic, and a member of the staff of the William Budge Memorial Hospital. I did not have a conversation in 1928, about the month of September, with James C. Peterson of Newton, in the Budge Clinic office. I did at one time, but not at the Clinic, nor in 1928. I talked to Mrs. Peterson, he was not present. I suggested that she have her appendix removed, and I said that the hospital bill should be paid. I did not say to her in substance or effect that all the money for hospital fees should be forthcoming.

#### CROSS EXAMINATION.

138 I did not say in substance or effect that the hospital and doctor's fees would be expected when the operation was done, I did not give her to understand that she would have to have the money before we would take her in. I said that the hospital bill should be paid. I emphasized it the same as I would to you, that the hospital bill should be paid. I did not make it necessary or mandatory. She did not tell me her circumstances. I did not know them entirely, until afterwards when I talked with a citizen of Newton. She was operated on at another hospital.

#### REDIRECT EXAMINATION.

She did not say anything after the conversation about her inability to raise the fees for the hospital.



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She said she would talk it over with her husband. I didn't hear any more about it until I heard that she  
 139 had been operated on at the Cache Valley Hospital.  
 She did not consult me further. She never came back. I have been taking care of them off and on since about 1923 or 1924, at the time the boy fell down the elevator. She owed me, that is the clinic since 1921 somewhere between two and three hundred dollars. I don't recall checks that were not paid. The hospital has at different times. One I think was in 1924.

Mrs. JAMES C. PETERSON, called by defendant.

140 My name is Mrs. James C. Peterson. It was my understanding in my conversation with Dr. S. M. Budge that the hospital fee had to be paid. Dr. Gudge  
 141 said he couldn't do it unless he had the money when it was done. I said "I am sorry", that I didn't think we could get it just then unless we could mortgage our home.

Mr. Budge: I move to strike that out as being sur-rebuttal and immaterial. Motion is denied and plaintiff excepts.

I went home and had the operation performed later in the other hospital.

Mr. Preston: Now in view of the ruling of the court on the question as to whether or not any testimony is competent which relates to medical treatment, we move at this time that any reference to medical fees in the entire case be stricken from the record on the ground it is incompetent, irrelevant and immaterial.

The motion is denied and defendant excepts.

142 Dr. E. L. HANSEN recalled in rebuttal by the defendant.



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I have had experience in regard to hospital for charitable institutions for charitable purposes.

Q.: Which ones?

Mr. Budge: I object to it as being immaterial. The objection is overruled.

In the Louisville City Hospital in Kentucky.

Q.: What is the practice there in regard to charity cases?

Mr. Budge: I object to that question as being immaterial, asking for a conclusion of the witness, and irrelevant altogether. The objection is overruled and plaintiff excepts.

Mr. Budge: And I object to it as being indefinite.

The Louisville City Hospital is a charitable institution, and in receiving patients, investigations—

Mr. Budge: We object to that, that it is a charitable institution, if the court please.

The Court: Yes, I think that it is highly objectionable; it is merely the opinion of the witness; he may think it is charitable. That may be stricken.

Mr. Budge: And I object to it on the ground that it is another community.

143 The Court: I will sustain the objection.

Q.: If charity cases are poor people who come in there, to your knowledge are any charges made whatever?

Mr. Budge: That is objected to as being immaterial.

The objection is sustained and defendant excepts.

I have had experience with other hospitals. The St. Mary's Elizabeth Hospital. The same practice obtained there.

Mr. Fonnesbeck: We offer to show that in the two hospitals named, which are conducted as charitable institutions, that no charges are made for charitable cases or poor patients, but that they are taken in as such and treated as such and given hospital treat-

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ment in all respects as others are, and no charges made whatever.

Mr. Budge: To which we object on the ground that it is incompetent, irrelevant and immaterial.

The objection is sustained and defendant excepts.

Mr. Budge: I desire at this time, if I may be permitted to do so, to offer this Exhibit C in evidence purporting to be a certified copy of the amendment of the articles of incorporation of the William Budge Memorial Hospital, purporting to amend Article 6, which was passed and amended at a meeting held on January 31st 1928.

Mr. Foncesbeck: We make no objection as to the time of the offer, but we desire to object to the offer on the ground that it is incompetent, irrelevant and immaterial, and for the reason that it appears to have been made on the 31st day of January and was not filed with the Secretary of State until the 11th day of February 1928: and also upon the ground that it purports to change the purpose of this corporation, and  
144 it appears from the minute entry attached hereto that only 226 shares of stock were represented and voted at the stockholders' meeting and that there were outstanding 4042 shares of stock, while our statutes specifically provide that the purpose of the corporation cannot be changed except by vote of tll of the stockholders of the corporation; and that the tax was levied subsquent to the amendment.

The Court: I will overrule the objection and receive the exhibit in evidence, so that I may have the entire record before me.

Defendant excepts.

(Thereupon the argument of the case was begun.)

Mr. Foncesbeck: I have one witness that comes within the period of 1928. She seems to have been

misstated, and I would like to get it in, as it covers a phase which has not been produced. She is here this morning.

Mr. Budge: But the case has been closed and the arguments begun, if your honor please, and I wish to object to the introduction of any further evidence in this case.

The Court: Yes, I will sustain the objection. I don't care to open it up for further evidence.

Defendant excepts.

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*(Title of Court and Cause.)*

### ASSIGNMENT OF ERRORS.

Comes now the defendant and appellant in the above entitled cause, and makes and files his assignments of error upon which he will rely for a reversal of the judgment and order of the trial court in the above entitled cause, and assigns error as follows:

#### Error No. 1.

The Court erred in entering its judgment and decree, adjudging that the tax of \$991.46, attempted to be assessed and levied for the year 1928, against the property of the plaintiff is illegal, void, and of no effect, and that the same constitutes no lien or encumbrance against said property, and permanently restraining and enjoining defendant from collecting said tax, or any tax listed and entered upon the assessment roll of Cache County for the year 1928, against the said property of the plaintiff, for the reason that said judgment and decree is against law and is not supported by the evidence in said cause, nor by the Findings of Fact and Conclusions of Law made and entered herein.

**Error No. 2.**

The court erred in making and entering its Finding of Fact No. 6, finding that the real property of the plaintiff, together with the buildings and structures located thereon was, during the year 1928, used exclusively for charitable purposes, for the reason that the said Findings is not supported by, and is contrary to the evidence adduced in the said cause; the undisputed evidence on behalf of the plaintiff's own witnesses being that the plaintiff charged and aimed to collect from all patients who entered the hospital for care and treatment who were able to pay (Tr. 16, 52, 53, Ab. 26, 36), and that the hospital fees for poor patients who were unable to pay were taken care of by the Church, the Bishop or Relief Society of the Ward, etc., or by the County out of its poor funds (Tr. 13,15, Ab. 25, 26).

**Error No. 3.**

The court erred in its Conclusion of Law No. 1, that the plaintiff's property and the whole thereof was exempt from taxation during the year 1928, for the reason that the said Conclusion of Law is not supported by any sufficient Finding of Fact, and is against the evidence and against law.

**Error No. 4.**

The Court erred in excluding the testimony of the defendant's witnesses, to-wit: C. W. Anderson, Logan, 130 North 3rd West; Mr. H. M. Mortensen, Smithfield, Mrs. H. M. Mortensen, Smithfield; Alma Jessop, Millville; John Bartschi, Providence; John R. South, Logan; Bishop Edwin Clawson, Hyrum, Utah, and the offered testimony by the said witnesses to prove that the policy and conduct of the plaintiff hospital in years prior to 1927, was to charge and collect from all patients who entered its hospital for care and treatment and to prove that the policy and con-

duct of the plaintiff hospital for the year 1927, had not been changed from prior years, to which order and ruling the defendant duly excepted (Tr. 115, Ab. 55.)

#### Error No. 6.

The Court erred in excluding the defendant's evidence and offer to prove that the conduct and policy of the plaintiff hospital to collect full hospital fees from all patients who entered the hospital for care and treatment, was the same in 1927 as in prior years, to which the defendant duly excepted (Tr. 108, Ab. 53).

#### Error No. 7.

The Court erred by its order arbitrarily limiting and confining the defendant's evidence and the testimony of defendant's witnesses to the years 1927, and 1928, when it was admitted and conceded by the plaintiff that the policy of the plaintiff was the same in 1928, as in prior years to which the defendant duly excepted (Tr. 115, 116, Ab. 55, 57).

#### Error No. 8.

The Court erred in over-ruling and denying defendant's motion for a new trial.

GEORGE D. PRESTON

LEON FONNESBECK

*Attorneys for Defendant and Appellant.*

(Duly served August 21, 1929, on attorneys for appellant by Affidavit of Mailing.)