

1931

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

Utah Supreme Court

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



Part of the [Law Commons](#)

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

Stewart, Alexander, & Budge; attorneys for respondent.

---

## Recommended Citation

Abstract of Record, *William Budge Memorial Hospital v. Maughan*, No. 4925 (Utah Supreme Court, 1931).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/510](https://digitalcommons.law.byu.edu/uofu_sc1/510)

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

---

In the  
**Supreme Court of the State of Utah**

---

WILLIAM BUDGE MEMORIAL  
HOSPITAL, a corporation,  
*Plaintiff and Respondent,*

vs.

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

4925

---

**Supplemental Abstract**

---

STEWART, ALEXANDER & BUDGE,  
*Attorneys for Respondent.*

In the  
**Supreme Court of the State of Utah**

---

WILLIAM BUDGE MEMORIAL  
HOSPITAL, a corporation,  
*Plaintiff and Respondent,*

vs.

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

---

**Supplemental Abstract**

---

BE IT REMEMBERED that this cause came on for trial on the 27th day of March, 1929, in the First Judicial District Court in and for Cache County, State of Utah, before the Honorable George S. Barker, sitting without a jury, whereupon the following proceedings were had:

Transcript

MR. BUDGE: If your Honor please I call  
55 attention to paragraph four of the complaint, in the next to the last line, after the word "thereof" I desire to insert the words "during said year" by interlineation.

Transcript

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 the mode of conduct of the plaintiff corporation, and as the issues are framed by the pleadings it would change the testimony and the issues that will come before the court.

MR. BUDGE: All I am trying to do now is to define the issue in the complaint.

THE COURT: It is limited to the year 1928?

MR. BUDGE: Yes, that is the purport of it. I might add that we are attempting to enjoin the collection of a particular tax, to wit: the tax for the year 1928. The question before the court will be first as to the status and condition of this property, as bearing upon the question of whether it was exempt from taxation during the year for which the tax was levied. We are not investigating any other tax and we are not investigating any other question but the validity of this tax by reason of the use and conduct of this property during the year for which the tax was levied; that is the question before the court; we are not complaining about any other tax than the 1928 tax.

MR. FONNESBECK: If this motion is granted it will materially change the issues now before

Transcript

the court. I think it would be helpful to the court in determining whether this property is being used exclusively for charitable purposes to know how the institution had been operated prior to 1928, inasmuch as there is no allegation that there was any change in 1928 over prior years.

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 what bearing it has, but the sole question now is 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: But I think the question is the use of the property in the year 1928.

MR. FONNESBECK: We do not feel that we should be restricted on the question of the entire use that has been made of this property—

THE COURT: Well, I don't think it is necessary to argue that question now; you may argue that during the introduction of evidence, but I don't think the amendment is necessary to paragraph four.

Transcript

MR. BUDGE: Well, I should like to have it because taken in connection with the context I want to make that a definite allegation, the whole paragraph, with reference to the year 1928 only; I want to make it plain and I should like to have that interlineation in there.

MR. FONNESBECK: We renew our objection.

THE COURT: The objection will be sustained; I think that paragraph is plain and can be understood as it is.

MR. BUDGE: Note an exception.

DR. D. C. BUDGE, called as a witness for the plaintiff, testified as follows:

I am a surgeon and reside at Logan, Utah. I am familiar with the property of the William Budge Memorial Hospital, located on Third East  
55 and Second North Streets. It consists of a building running north and south 180 feet; the main building is 100 feet long and 40 feet wide and the nurses' home 80 feet long and 40 feet wide. We have fifty beds. The south part of the building is used as a hospital, and the north part partly for a hospital and partly for a nurses' home. The rates are \$2.50 a day in a ward; \$2.75 a day for some private rooms, and where there are two in

Transcript

a room; \$4.00 a day for a private room, and two rooms in the entire building for which the charge of \$5.00 a day each. Wards are large rooms accommodating several persons. There were thirty nurses in the hospital in 1928 and the condition of the building and accommodations I have described obtained during that year. Freshmen nurses are paid \$9.00 a month, juniors \$10.00 and seniors \$11.00. These payments cover the items of books, pencils, clothing, etc. That is the only compensation they get except the teaching. There is a school for nurses conducted by the hospital. In 1928 the hospital was equipped with a laboratory, X-rays, beds, operating rooms, etc., and the hospital serves Cache Valley, Box Elder County, Rich County, Bear Lake County and Southern Idaho. In 1928 any and all patients were admitted who applied, except contagious diseases or insanity cases or cases subject to state, county or city quarantine. No distinction was made in admitting patients on account of race, creed or color. Patients were sent to the hospital by anybody. The members of the staff sent most of the patients, but patients are also sent by organizations and doctors who are not members of the staff. They are sent by bishops of wards, churches, Kiwanis and Rotary Clubs. Patients are generally charged no matter from what source they come. The hospital will attempt to have them pay. They

Transcript

did not all pay in 1928. We generally have it understood and patients are notified as early as possible, or responsible parties informed, and bills are given to them so that they will understand. They are notified that it is expected that the bills will be paid by the time they are ready to leave the hospital. It is our policy to collect from all, as much as we can do so. That is the only way a hospital has of supporting itself. If they are not able to pay all the charges, or organizations or the county or anybody does not see fit to take care of these patients, we take care of them and the hospital is the loser. That was true in 1928. In 1928 the hospital staff performed the majority of the work that was done in the hospital for patients sent by churches and other charitable organizations. During that year the members of the staff did work for which no charge was made for doctors' services to the amount of about twenty-five hundred dollars. The property in 1928 was managed by the Board of Directors. The medical and surgical work was done by the medical staff. There is an executive staff and a regular staff. If a doctor wants to become a member of the staff he makes application in writing. In 1928 the staff consisted of thirteen physicians, with an executive staff and director and a medical director. I was medical director in 1928 and there was an assistant medical director. As to patients



Transcript

sent by bishops of wards and other organizations they are given the best of accommodations. Generally they are assigned to a ward because that is what the organization specifies. In 1928 there was no distinction between the treatment of these patients and any other patients in the hospital. They receive just as good treatment as any others, and all patients receive the same class of care and treatment. In 1928 the hospital organization had nothing whatever to do with the fixing of fees charged to patients by doctors. No person applied for admittance to the hospital in 1928 who was rejected. The income from the property in 1928 was devoted to the maintenance of the hospital—payment of interest and to maintenance and improvements. None of the income was used for any other purpose. In 1928 we had about 1800  
61 patients. The hospital is standardized as required by the American College of Surgeons and it is recognized by the Federal Government as an institution that may be permitted to withdraw alcohol for treatment of patients. It was not required in 1928 to file an income tax report. During 1928 the medical and surgical treatment in the hospital was by members of the staff. Our X-ray work, which is of a very technical character and requires great skill, was done by a doctor specially qualified. He is the only one that does that work in detail, and for major surgery, that

Transcript

is surgery where the operation is serious and complicated, there are only two surgeons on the staff who do that work. I am one of the surgeons and the medical director. The other members of the staff, except these two surgeons, do not perform major surgery. That was true in 1928. In 1928 the nurses' home was operated in connection with the hospital property. Patients coming to the hospital choose the class of room they desire to occupy, according to the price they want to pay. In 1928 the doctors on the staff received no part of the hospital charges that were made against the patients. The course of instruction given nurses on this property during 1928 was the usual course given in any institution and acceptable to the State Board of Medical Examiners of the State of Utah, consisting of the training from Superintendent of Nurses and graduate nurses, as well as teaching all the fundamental branches such as anatomy, physiology, bacteriology, chemistry, and all of the things that lead to the teaching of girls to be efficient nurses.

## CROSS-EXAMINATION.

When patients come to the hospital they understand that the hospital is to be paid from some source, but, of course, if they were to come there

Transcript

without anybody helping them at all, if they came without any advice, they would be taken care of anyway, whether the hospital got anything or not. I do not remember of any specific case of that kind coming to the hospital in 1928. This community is different from other communities; we don't have the transient people coming through here; the people generally live here and have their homes here and we don't have as many transients as we otherwise would have. Not as many as would come to a hospital located in Ogden or Pocatello.

Q. Do you recall any case prior to 1928 that you accepted as pure charity, where they were unable to pay for their hospital charges, and were not guaranteed by the bishop or the county, or any other organization?

A. Yes, sir. We had a party came through Wellsville who took sick with typhoid and was taken care of in this hospital for sixteen weeks and no charge was made. They went on to California. That was about the year 1921. The man and his wife were traveling through and they had absolutely nothing and no place to go and his wife was taken care of in the hospital \* \* \*

70 The charge of the doctor for administering the anaesthetic is a doctor's charge and not a hospital charge. The charge for the anaesthetic itself is included in the hospital charge. The X-ray

Transcript

fee is collected by the hospital. It is such a technical instrument, and particularly the reading of the pictures, that it requires an expert to do that and the hospital hasn't work enough to put a full time technician on that work, so that the hospital hires a special man to do that work and pays him for his services. It hires him on a percentage basis. The hospital gets 25 per cent of the X-ray fee and the technician 75 per cent. This special technician is hired on this percentage basis just like any other employee. The Budge Clinic is a partnership. For the services of the technician, the man who runs the X-ray machine, the payment is made to the Budge Clinic, but the hospital employs him.

Our rates at the hospital are lower than any of them in the country. We have ascertained that upon inquiry. So far as this hospital is concerned it is true that all we have to do is walk in there and things are furnished for us at the expense of the hospital. We make our charge to the patient for the operation, but do not pay the hospital for the use of its instruments. If the hospital were not there and you desired me to perform an operation I would come over to your home and do it. The people who desired the operations could employ the nurses and fix up in the best manner possible in their homes, if they were willing to take the chance, and I could go around from place

Transcript

to place, but I could not give then anywhere near the service.

Q. In what way?

A. In any way.

Q. Well, name some of them?

A. Why, as near as I can remember, at the first little place I had, I had a death rate of about six or seven per cent in a little house; we operated as long as we could and then got another place and put a little money in it and we lowered our  
81 death rate to about four or five per cent and with this hospital we are down to about one or one and a half per cent. Probably that will answer your question.

Q. Probably. I was wondering if that was entirely due to the conditions surrounding or possibly to the skill of the operator.

A. Due to everything that enters into it—the hospital, the nursing, the sterilization, the doctors, and everything that enters into it.

89 While members of the staff and their families are taken care of in the hospital free of charge by reason of the fact that they are teaching year in and year out, some of them never have anybody there at all. There have been very few in there. It is a good proposition for the hospital as well as for the doctors, otherwise the hospital would have to pay the teachers, and there isn't a doctor that has ever received a dime in the

Transcript

history of the institution for teaching all these years. What they receive from the hospital would not in any way compensate them for their work, but it is a thing that hospitals generally do.

108       The rule of 75 per cent to the doctor and 25 per cent to the hospital for X-ray charge applies also to special laboratory work, but not on all laboratory work. The special work means the scientific work in the laboratory that is done by the doctor, for which he gets his pay on a commission basis, and that is listed under the account of the Budge Clinic. The routine laboratory work done by the laboratory technician, Miss Peterson, for which a charge is made by the hospital, is charged against each patient who has been in the hospital for thirty-six hours. The hospital gets this charge and the doctor gets no part of it.

WILFORD RAWSON, a witness on behalf of  
118 the plaintiff, testified as follows:

I am Superintendent of the Thomas Dee Memorial Hospital and am familiar with the management of hospitals of this state and elsewhere, and with the use of hospital property, etc. The Thomas Dee Memorial Hospital and myself individually are members of the American Hospital Association, which has a membership of approximately five thousand. We meet once a year. I have attended seven of these meetings.

Transcript

Q. Calling your attention particularly to the use of the X-ray and the scientific part of the laboratory work, that is required to be done by physicians. I will ask you whether or not the use of the X-ray in the manner it was testified here, that is to say the employment by the hospital of someone or some technician, or more than one technician, to interpret X-rays and do this scientific laboratory work, is a use of hospital property that is common to hospitals throughout the country, reputable hospitals, on a percentage basis to the operator?

A. I should like to make just a little explanation. There is a difference between a technician and a radiologist. A technician could be employed to take pictures; a radiologist understands and is employed as an expert to interpret the pictures, as Dr. Budge testified here yesterday. My investigation was throughout the United States. In fact an inquiry was sent out by the American Hospital Association and they found that the smaller hospitals, over sixty per cent of them, were employing such people on a commission basis. I also talked to a number of hospitals individually, because we were in the same position as a small hospital, and I talked to them for the purpose of ascertaining what was the best to do. I found that a commission was paid of sixty to eighty per cent to the radiologist for interpreting these

Transcript

pictures. The reason for giving a commission was this, that the hospitals were not in a position to employ a full time radiologist, because they would have to specify certain hours for them to be there, but by placing them on the commission basis it was to the interests of the radiologist to come any time that he might be needed. In our own hospital, we have employed, up to the first of the year, a man who had absolute charge of the X-ray and we gave him 75 per cent. However, in this case he furnished his own supplies. There is one hospital in Salt Lake City that is paying 80 per cent.

THE COURT: Now, the question is, how does this practice compare with the general practice throughout the country?

A. As I stated, from the information I have gained about 60 per cent of the smaller hospitals employ them on a commission basis.

MR. BUDGE: Approximately what commission?

A. Running all the way from sixty to eighty per cent.

CROSS-EXAMINATION—DR. D. C. BUDGE.

137 Q. Doctor, is it not a fact that in many cases you have held patients in the hospital until the hospital fee was paid.

A. No, sir.



Transcript

Q. Do you testify that this is not true in any case?

A. I so testify, with this qualification, that when patients come there the people who are responsible have it explained to them that it is the intent that their bill should be paid by the time the patient leaves the hospital and when it comes time for them to leave the hospital, with all of that explaining, instead of coming themselves they will sometimes send somebody else that has no responsibility at all for the patient, without any idea of paying the bill, and in that event, once or twice I would say to him, "Well, now, your father had a definite understanding with us about that and maybe it would be well for us to get in touch with him."

Q. Before he leaves?

A. Yes, maybe it would be well for us to get in touch with him.

Q. Do you mean to say that that was only once or twice, Doctor?

A. Not many times.

Q. Is it not a fact you often had patients pacing up and down your hallway who couldn't get out?

A. No, sir.

Q. And they felt that they were encaged?

A. Well, that is up to them to say how they felt.

Transcript

Q. And you impressed on them that they could not go?

A. Never.

Q. Or the superintendent did?

A. No, sir.

138 As a general rule we have had but very little trouble with our patients, because we try to get them to understand the situation and agree with them, and we generally get along very well. If the patient comes in first to the superintendent he explains to them what the rules are and gets a sort of understanding. If it is an emergency case they are taken in and cared for and everything possible is done for them, and then bye and bye, when we find out who is the responsible party, in a few days or a week, they are taken in and explained these matters.

Q. They are required to pay in advance, aren't they, or billed in advance for the hospital bills?

A. Very few ever pay in advance.

Q. I didn't ask you that, but they are billed are they not?

A. If a patient comes in without an advice to us, then we let them know what the hospital expects and the rules and regulations and inform them as to these matters, but if they are emergency or accident nothing is ever stated.

Q. Suppose I bring my wife up there and

Transcript

she should stay a couple of weeks, what is the rule as to the fees?

A. They would try and inform you, if they possibly could, about the rules and regulations of the hospital.

Q. When would I be required to pay for the first week?

A. Well, if it were agreeable to you you would pay the first week. If you were to say, "well, now, I will have my money before I am ready to leave, to fix matters up," we would say, "that is fine."

139 I know James Peterson of Newton and remember a couple of years ago he had his daughter in the hospital. I remember him coming there and that something was said about the bill, but Mr. Peterson thoroughly understood it. I do not remember that the girl was detained and could not go home with her parents. She was never detained. She was released absolutely, after there was an understanding that he should pay the bill and that we would look to have him pay the bill, because that is one of the things I am telling you about.

Q. But you released her, did you?

A. Yes, sir. We never imprisoned anybody.

Respectfully submitted,

STEWART, ALEXANDER & BUDGE,  
*Attorneys for Respondent.*