

1931

# William Budge Memorial Hospital v. E.N. Maughan : Brief of Appellant

Utah Supreme Court

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George D. Preston, Leon Fonnesbeck; attorneys for appellant.

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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*

# 4925

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## APPELLANT'S BRIEF

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*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.

# IN THE SUPREME COURT OF THE STATE OF UTAH.

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*Defendant and Appellant*

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In this case the plaintiff, William Budge Memorial Hospital, a corporation, brought an injunction against the County Treasurer of Cache County to enjoin him from collecting the taxes, \$991.46, levied and assessed as the general state and county taxes against the property of plaintiff for the year 1928. The injunction is sought on the alleged ground that the plaintiff's property is used exclusively for charitable purposes and is therefore exempt. The plaintiff's claim that its property is exempt was denied by defendant, and defendant affirmatively alleged that plaintiff was a corporation organized for pecuniary profit and gain, and that its property was not used exclusively for charitable purposes but that all patients who entered its hospital were required to pay the regular and substantial hospital fees, etc. The trial court

found and held that plaintiff's property was used exclusively for charitable purposes and was therefore exempt and enjoined defendant from collecting said tax or any part thereof. A new trial having been asked by defendant and denied by the court, the defendant now appeals to this Court.

### STATEMENT OF FACTS.

The plaintiff is a corporation organized in 1914 under the laws of this State, as the Budge Hospital with a capital stock of \$35,000.00 divided into 3500 shares at \$10.00 each. It was organized as the articles of incorporation show, in all respects as other stock share corporations, organized for pecuniary profit and gain. The hospital owns its grounds, buildings, furniture, and equipment. The main building and the Nurses Home are both three story buildings, in addition to the basements. The main building is 100 feet long by 40 feet in width, and the Nurses Home is 80 feet long by 40 feet in width. The rates charged by the hospital are \$2.50 per day in a ward, \$4.00 per day for private room, with a few rooms at \$5.00 per day (Ab. 23).

The purpose of the organization of the corporation is stated in article 6 as follows:

#### Article 6.

"That the purpose of said corporation and the business for which the same is formed, is to build, establish, operate and maintain, at Logan City, Utah, and at such other place or places as may be decided upon by the board of directors, a hospital, or hospitals, for the treat-

ment and care of persons suffering from any and all ailments, excepting the treatment of such ailments and diseases as may be, by the by-laws of said corporation, excluded, and to install in said hospital any and all conveniences equipments and appliances for the proper care and treatment of the patients of said hospital or hospitals; to acquire, own and hold real estate and all kinds of personal property and mixed property and to sell, mortgage, hypothecate and otherwise dispose of the same; to acquire, hold and own, sell, mortgage, hypothecate and otherwise dispose of all other kinds of property, rights, privileges and franchises that may be deemed of value or useful in carrying out any of the purposes of the corporation; to incur indebtedness in such amount as may be deemed necessary or expedient; to buy or otherwise acquire, sell and dispose of stock in other corporations, or associations organized for any purpose similar to this corporation and in general to do anything incidental to the main purpose of this corporation which in the discretion of the board of directors for the time being may be considered necessary, convenient and proper to carry out said corporate purposes."

Shortly after its incorporation its capital stock was increased and the name of the Hospital was changed from the "Budge Hospital" to the "Utah-Idaho Hospital", under which name the plaintiff operated until 1927, when the name was changed to "The William Budge Memorial Hospital".

In the latter part of January and the fore-part of February, 1928, an attempt was made to alter or change the purpose of the corporation by an attempted amendment of Article 6. The "Notice of Stockholders Meeting", mailed out by the Secretary (Plaintiff's Exhibit C) sets forth the proposed amendment, and is as follows:

“Notice of Stockholders Meeting.

To the Stockholders of the William Budge Memorial Hospital:

You will please take notice that the annual meeting of the stockholders of the William Budge Memorial Hospital will be held at the Hospital Building in Logan, Utah, on Tuesday the 31st day of January 1928, at 2 o'clock P. M. of said day.

You are further advised that in addition to the ordinary business of the corporation the stockholders will consider the advisability of amending Article Six of the Articles of Incorporation of the Corporation to read as follows:

ARTICLE VI.

The corporation is created for the purpose of maintaining, operating, and conducting hospitals and other institutions for the care and treatment of sick, wounded, injured and infirm persons, of maintaining schools and other places for the education and training of nurses; of acquiring, holding, owning and controlling suitable grounds and structures to carry out the objects of this corporation, with power to receive from any source whatever gifts, donations devises and bequests of real and personal property, for the use and benefit of the corporation; to charge and receive compensation for nursing and treating patients; to nurse and treat patients free of charge whenever, in the opinion of the Board of Directors, they are worthy objects of charity; to have and exercise all the

rights, powers and privileges given to such corporation by common law; to sue and be sued; to borrow money and secure the payment thereof by notes, mortgages and deeds of trust upon the personal and real property of the corporation; to mortgage, incumber, lease, sell or convey such real and personal property as may be necessary and proper to carry out the objects of the corporation, unless such property has been received as a gift or devise for some special purpose, and if so received, it shall be used and applied only for such a purpose, provided, however, that in no event shall any profit result from the management or operation of this Corporation, of any of its hospitals or properties, to the incorporators, or stockholders herein, or to any other person, except the general public, for whose benefit this corporation has been organized, and all money received by this corporation from any source whatever, in excess of the actually necessary expenses and disbursements required for carrying out the objects of this Corporation, shall be used and held for the sole benefit and advantage of this corporation, in the furthering of the charitable purposes for which it has been organized.

“From net profits arising from the hospitals or other properties of the Corporation, if any such profits there shall be, the Board of Directors shall, from time to time, set apart, as a sinking fund, such sums as it may deem advisable, to be used whenever, in the opinion of the Board, the same should be used for the maintainance, enlargement or improvement of the hospitals or other corporate properties.”

"It is the opinion of the Board of Directors that this amendment should be made *as it would be for the best interest of the hospital.*

"By reason of the recent change made in the name of the Hospital, from Utah-Idaho Hospital to William Budge Memorial Hospital, it will be necessary for you to send in your stock certificate *properly signed*, so that a new stock certificate bearing the name of WILLIAM BUDGE MEMORIAL HOSPITAL can be issued to you. We would thank you to give this your *immediate attention* so that the change can be made *without delay.*

"Also kindly give us your latest address so that future notifications may be properly forwarded to you.

William Budge Memorial Hospital.  
Geo. Y. Smith, Secretary."

The policy of the hospital is to charge all patients, who enter its doors for care and treatment, the regular hospital fees. If the patient is sent to the hospital by the Relief Society, the Bishop of a Ward, or any social clubs, etc., the policy of the hospital is to charge, and it aims to collect from the members of such relief society, ward, church or club the full and regular hospital fees due from such poor patient. The Hospital has no policy to even reduce its regular hospital charge or fee to such poor patients. If the patient is impecunious and unable to pay the hospital fees, and is not sponsored or taken care of by the Relief Society, Bishop of the Ward, or club, etc., then it is the policy of the hospital to apply to the County



Commissioners of Cache County and have the County pay the regular hospital charge or fee for such poor patient. The statements and bills so presented by the hospital to the County have always been paid by the County to the hospital as presented and have been paid out of the County poor fund (Ab. 51).

That it is the policy of plaintiff to thus charge its regular hospital fee from all patients who enter its doors for care and treatment is to a large extent admitted by the pleadings: In paragraph 3 of the Reply we read:

“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.”

Again in paragraph 4 of the Reply:

“Answering paragraph IV plaintiff admits that it has been is 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.”

That such is the policy of the plaintiff Hospital is also frankly admitted by Dr. D. C. Budge, the Medical Director

of the plaintiff Hospital and Chairman of the Medical Staff, in his direct examination (Ab. 23, 24):

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

Q.: No matter from what source they came?

A.: We would attempt to have patients pay, yes. I 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 hospital *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 any 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."

And also in his cross-examination (Ab. 25, 26, 28):

"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 clubs, or the Bishop of the wards, or other relief organizations.

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.

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\*\*\*

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.

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 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 that percentage for his services."

Likewise, the hospital Superintendent, O. J. Larsen, testified that all patients were told when they entered the hospital that they were expected to pay the hospital or make arrangements to pay the hospital fee before they left; that the hospital fees, which the plaintiff hospital charges and tries to collect are the regular charges that are charged all patients, standard hospital charges; that the total unpaid hospital accounts for the year 1928 amounted to only \$272.76, which he as such superintendent had made every effort to collect (Ab. 37). The gross earnings of the hospital in 1928 was in excess of \$48,000.00, all of which was collected, except the \$272.00 (Ab. 35). The net earnings of the hospital for the year 1928 was \$5000.00 (Exhibit 12).

In addition to the above admissions by the plaintiff, it must also be kept in mind that the defendant offered to prove by witnesses subpoenaed and present at the trial

that not only was it the policy of the plaintiff hospital to collect its regular hospital fees from all its patients, including poor patients, but that on many occasions, covering a period of 8 to 10 years prior to 1928, the plaintiff hospital had actually on various occasions detained its poor patients and prevented them from leaving the hospital until the hospital fees were paid. The objection to the introduction of this testimony was sustained by the Court on the ground that it was incompetent (too remote) and cumulative. To that ruling of the Court defendant excepted, and cites as error (Ab. 56, Error No. 4).

The plaintiff hospital is a closed hospital, all major surgery is confined exclusively to Dr. D. C. Budge and his brother S. M. Budge whom he has taken in with him on the surgery end, both are members of the Budge Clinic. The operation of the X-ray machine is confined to Doctor Hayward (Ab. 30), who is a brother-in-law of Dr. D. C. Budge, and a member of the Budge Clinic, and the medical staff of the hospital (Ab. 39). The Budge Clinic gets 75% of all laboratory and X-ray fees charged and collected by the hospital from the patients. The hospital keeps up and pays all expenses in connection with the X-ray machine as well as the laboratory, out of its 25% split. The 75% of the gross earnings from these two sources are paid over to the Budge Clinic by the hospital without any deductions for any portion of the expense (Ab. 37). The hospital fees thus collected by the hospital, for laboratory and X-ray service and turned over to the Budge Clinic in

1928 amounted to \$6170.06 (Ab. 58). The income to the hospital from the X-ray for the year 1928 was \$1414.25; the X-ray expense to the hospital for the year 1928 was \$1116.60 in addition to the expense for supplies for the X-ray, electric energy charge, etc. (Ab. 36).

The complaint alleges that the hospital is a corporation, and owns certain property with the buildings thereon which have been maintained and operated for the care and treatment of the sick, injured and infirm persons, and that plaintiff has also maintained and conducted a home for the accommodation, comfort and education and training of nurses, and that the said real estate is necessary for the convenient use and occupation of the said hospital equipment and plant; which allegations are admitted by the Answer. The complaint also alleges that the said property of the plaintiff corporation with the buildings thereon, has at all times been used and now is used exclusively for charitable purposes, which allegation is denied by the Answer.

The Answer affirmatively alleges and the Reply admits:

1. That the plaintiff, William Budge Memorial Hospital, is the same corporation as the Utah-Idaho Hospital, which was organized April 24, 1914.

2. That plaintiff corporation has paid taxes each year on its property since its organization prior to 1928.

3. That it has been the policy of the plaintiff during the year 1928, and prior thereto, to charge and collect its

regular hospital fees from all patients entering its hospital for care and treatment.

. That at various and diverse times plaintiff has applied to the County Commissioners for the payment of hospital fees for the care and treatment of indigent persons cared for and treated at its hospital.

The Answer alleges affirmatively, and the Reply denies, thus putting in issue the following allegations:

1. That the Utah-Idaho Hospital was organized as a corporation for pecuniary profit, and that neither under the name of the Utah-Idaho Hospital, nor the William Budge Memorial Hospital, has the plaintiff complied with the laws of this State governing the organization of corporations not for pecuniary profit and gain.

2. That during the year 1928, and for many years prior thereto it has been the policy of the plaintiff to demand and collect large and substantial hospital fees from all patients entering its hospital for care and treatment, and that such fees be paid before patients left the hospital; which has necessitated at times public subscription and donation in order to relieve poor patients.

3. That plaintiff's hospital is not open to all medical practitioners in good standing, but is operated for the use, benefit, and gain of certain members of the medical profession belonging to or affiliated with the Budge Clinic, who own or control a majority of the stock of the plaintiff corporation, and thus dominate the policy of the hospital.



## ARGUMENT.

These matters thus put in issue all go to the one big and controlling question before the court in this case: Is the plaintiff a charitable institution, and is its property *used exclusively for charitable purposes*? If it is, then all will agree that the plaintiff is entitled to have its property exempt from the payment of taxes. If plaintiff's property is not thus used, then plaintiff should be required to pay its fair share of the taxes, for it is the mandate of the Constitution and the laws of this State, that "all property in the state (not exempt) shall be taxed in proportion to its value." (Article 13, Sec. 2. Constitution; Sec. 5861, Compiled Laws 1917).

It is submitted that the trial court erred in its judgment holding that plaintiff's property was used exclusively for charitable purposes and was therefore exempt from the payment of taxes, and permanently enjoining the defendant, as County Treasurer of Cache County, from collecting the taxes levied and assessed against the plaintiff's property for the year 1928, for the following reasons:

A. From the admissions made and conceded by the plaintiff in its pleadings, it affirmatively appears that the plaintiff is not a charitable institution and that its property is not used exclusively for charitable purposes; for in the Reply it is affirmatively alleged, and admitted: (1) That plaintiff is the same corporation as the Utah-Idaho Hospital and owns and conducts the same hospital property, (and the Articles of Incorporation admitted in evi-

dence conclusively show that the Utah-Idaho Hospital was organized for the purpose of carrying on said hospital business for pecuniary profit and gain); (2) That plaintiff has at all times charged the patients who entered its hospital reasonable fees, necessary for the maintenance, operation and upkeep of the hospital, including the purchase of necessary equipment and providing necessary facilities, etc. (3) That it was the plaintiff's 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." From such admissions in the pleadings, it is submitted the judgment holding that plaintiff's property is used exclusively for charitable purposes is erroneous and can not be sustained.

B. From the plaintiff's own testimony it affirmatively and conclusively appears that the plaintiff's hospital property is *not* used for charitable purposes, but is used in carrying on the business of conducting a private hospital as a regular and ordinary business institution, and for the private interest and benefit of those who manage and control it. Dr. D. C. Budge stated that he considered all patients, at the hospital charity patients so far as the hospital was concerned, although the full hospital

fees were paid. Manifestly that is not the law. When the recipients pay for what they receive they are not on charity. Phillips vs. St. Lewis R. R. Co., 17 L. R. A. (N. S.) 1167 Mo.

C. Defendant's Exhibit 12, made from the Report of Plaintiff's Auditor, Parley Petersen, on the books of the plaintiff corporation for the year 1928, shows that the plaintiff made a net gain in the year 1928 of in excess of \$5000.00, over all expenses and disbursements for that year. The books of the plaintiff corporation also show that during the year 1928, the gross receipts (gross hospital charges collected from patients) were in excess of \$48,000.00, and that the hospital collected all of this money except \$272.00 (about  $\frac{1}{2}$  of one percent), which was represented largely by sundry small X-ray and laboratory accounts, of which amounts the Budge Clinic is entitled to 75% and the hospital to only 25%, when the same is collected by the hospital.

It is submitted that an institution which can show a net gain (net earnings) for the year of \$5000.00 and which has collected within one-half of one percent of all its accounts during the year is a very successful business and not a charitable institution, and is not entitled to have its property exempt on the ground that it is used exclusively for charitable purposes.

Prior to the year 1927, the hospital had paid off an obligation of \$10,000.00 and had in addition to that accumulated a surplus of \$31,000.00, since its organization

in 1914. This \$31,000.00 was put into the Nurses' Home built in 1927. This also shows that it is a successful and growing business institution.

D. The purported amendment to Article 6, voted on January 31st, 1928, and filed on February 11, 1928, was and is not effective and cannot aid the plaintiff corporation in its effort to avoid payment of its taxes on the hospital property, for: (1) The amendment purports to *alter or change the* original purpose of the corporation, which, under our statutes, can not be done except by the approval and consent of all of the outstanding stock (Sec. 886, Compiled Laws 1917). There was, as appears from the evidence, at the time of the proposed amendment 4042 shares of stock outstanding in plaintiff corporation and from the certified minute entry by the Secretary, attached and filed with the proposed amendment (Plaintiff's Exhibit C) it affirmatively appears that there were only 2260 shares of stock represented at the stockholder's meeting when the proposed amendment was voted, and adopted. It is therefore submitted that the proposed amendment is void and of no force or effect, and did not in fact alter or change the original purpose of the corporation. It follows that the plaintiff is not organized as a charitable institution at the present time. It is organized as any other financial business corporation, whether the profit and gain goes to the corporation, for its further growth and expansion, or to the stockholders, is immaterial so far as its liability to pay taxes is concerned; *Lodge vs. Speth*, 106 Pac. 1077 (Kan.).

The law required that if plaintiff was organized for pecuniary profit it must set forth the amount of its capital stock and shares. This the plaintiff did. The Articles are in harmony with a business corporation, and wholly inconsistent with those of a charitable organization. "The fact that plaintiff corporation was formed and organized to treat and care for the sick and injured is not controlling for such thing may be done for profit as well as for charity."

Holy Cross Hospital, 88 Pac. 691 (Utah).

Public Society vs. Board of Review, 125 N. E. 7 (Ill.)

People vs. Hospital, 87 N. E. 305.

The right to an exemption can only be established by strict proof of the existence of all facts necessary to authorize it. Institutions must be organized for public charity, and not for profit, and an essential element is that it shall not have the power to declare dividends.

Plaintiff also pays a corporation license tax, and has done so up to the present time, which it would not be requested to do if it was a charitable corporation, or a corporation not organized for pecuniary profit. Sec. 1271 Comp. Laws, 1917.

(2) If we assume the proposed amendment did alter the original purpose of the plaintiff corporation, still it does not aid the plaintiff for it came subsequent to the time when the tax lien had actually attached for the year 1928, and therefore, could not affect or relieve the plaintiff from its liability to pay its taxes which had already accrued for that year.

The tax lien on plaintiff's personal property for 1928, attached to plaintiff's real estate, as of January 1, 1928, and the tax lien for the real estate and improvements for 1928, attached as of the second Monday in January, 1928—Sec. 5996, 5997, Comp. Laws, 1917, Sec. 5995, specifically provides that the tax lien is not satisfied or removed until the tax is paid. In the case of *Union Cent. Life Ins. Co. vs. Black*, 247 Pac. 486, this Court approves and upholds this provision of the law.

E. The plaintiff admits in its Reply, and the undisputed evidence shows that the plaintiff regularly files its claim against Cache County to cover the hospital fee for indigent poor patients who are treated at the hospital and are unable to pay the hospital charges. It is submitted that the plaintiff has thereby forfeited its right to claim that its property is exempt from taxes on any ground to claim that its property is used for charitable purposes to such an extent that it should be exempt from the payment of taxes.

The theory upon which tax exemption is granted to charitable institutions, is, that by dispensing charity and relief to the poor and those in need of help, (which are otherwise a burden on the state and society) the State and society is benefitted to a larger extent than the amount of the taxes, which would otherwise be received from such institution, for the state is thus relieved of the burden which otherwise devolves upon it and society,—to

care for poor and indigent persons who are sick and unable to care for themselves.

26 R. C. L. 316.

Commissioners vs. Makibben, 29 A. S. R. 382 (Ky.).

Public Society vs. Board of Review, 125 N. E. 7 (Ill.).

“The theory justifying exemption of this class of property so used is that the resultant benefits to the body politic will be equal to or in excess of the taxes which would otherwise be imposed, and such religious, scientific, literary or charitable use of the property should be encouraged by relief from taxation. But the statute says it shall only be exempt when the property is used for these purposes, and not held or leased out for profit. It is a rule so well established as to need no citation of authority, that it is incumbent upon the person who claims his property as exempt from taxation to show that the use of that property clearly falls within the exception. The rule of strict construction applies, and, if any doubt arises as to the exemption, that doubt must be decided against the person who claims the exemption. While it must be borne in mind that the decisions of other jurisdictions are largely influenced by their constitutional and statutory provisions, it is quite generally held that where property belonging to a charitable institution is rented out or otherwise employed as a source of profit to the institution, it is not sufficient to save that property from taxation because the rent or income is devoted exclusively to charitable purposes; the exemption is generally held to apply only to the property which is actually used and occupied for the charitable purposes for which the institution is organized.”

The Court then cites a long list of cases and continues:

“It is sufficient to say that the great weight of authority appears to be that, because the rents, issues, and profits of the property of a charitable institution are used for the purposes of charity, that fact will not exempt the property itself from taxation, under the rule of strict construction applicable where property is claimed to be exempt under the exceptions to the general rule that all property must bear its equal burdens of taxation.”

State vs. McDowell Lodge, 38 A. L. R. 31 (W. Va.).

The evidence shows that the plaintiff hospital is not a hospital open to all medical practitioners in good standing in the medical association of this state, but is operated largely for the benefit and gain of certain members of the medical profession belonging to or affiliated with the Budge Clinic. The evidence also shows that the members of the Budge Clinic and those immediately associated with them own and control the majority of the stock of the plaintiff corporation; that Dr. D. C. Budge has been the medical director of the hospital and chairman of the medical staff since the organization of the hospital, and that he was the chief moving factor in its organization. That he absolutely controls the policy of the hospital by the special provisions of the Articles of Incorporation, to which we direct the court's attention. It will be observed from the articles of incorporation that the Board of Directors do not control the internal policy of the hospital, but that the same is left with the medical director and the



medical staff. Dr. D. C. Budge has done all of the major operations in the hospital since its incorporation, except such as has been done in later years by his brother S. M. Budge, who has now been associated with Dr. D. C. Budge in the surgical work.

The evidence also shows that the Budge Clinic receives 75% of the gross earnings of the hospital from all X-ray and laboratory fees and that such earnings are paid to the Budge Clinic without any deduction of any expense, and that the hospital is required to keep up the said machine and furnish all supplies, expenses, etc., connected with the X-ray machine and the laboratory work out of the 25% split which goes to the hospital.

We also call attention to the evidence produced by Dr. E. L. Hansen (Ab. 61 and pages following) wherein it conclusively appears that the hospital was not open to qualified physicians in good standing except such as Dr. D. C. Budge and his associates chose to admit. It is therefore, submitted that the plaintiff hospital is operated and conducted for the professional and financial benefit of certain physicians, particularly the physicians belonging to the Budge Clinic, and that its argument in regard to receiving charity patients is a mere pretense and made for the purpose of bringing the plaintiff corporation within the statute exempting its property from taxation on the ground that it is a public charity and that its property is used exclusively for charity purposes.

In the Sisters of the Third Order vs. Board of Re-

view, 83 N. E. 272, the Illinois Supreme Court definitely lays down the rule that under such a state of facts plaintiff institution is not entitled to tax exemption.

“If a hospital is conducted for the use and profit of persons engaged in the practice of medicine and surgery (City of Knoxville vs. Ft. Sanders Hospital, 148 Tenn. 699, 257 S. W. 408; Mayor and Aldermen vs. Vicksburg Sanitarium, 17 Miss. 709, 78 So. 702), or as an adjunct to a medical college conducted for the profit of its owners (Gray Street Infirmary vs. City of Louisville, 65 S. W. 11, 23 Ky. Law Rep. 1274, 55 L. R. A.) 270), it cannot be regarded as a charitable institution, and is subject to taxation. This is in accord with our holding concerning business colleges in the case of Lawrence Business College v. Bussing, 117 Kan. 436, 231 P. 1039.”

Nuns of Third Order of St. Dominic vs. Younkin, 235 P. 872.

In the Younken case the Kansas court held that the property of that hospital was, however, exempt from taxation for the reason that the corporation was organized for benevolent and charitable purposes, had no capital stock, could declare no dividends and earned none, and devoted all of its income to the care of sick and injured who were unable to pay. These facts distinguish the Younken case from the case at bar.

In addition to that it should be kept in mind that the only patients who are accepted at the hospital without any charge being made against them are the members of the medical staff and their families.

The question of exemption from payment of taxes on the ground that the property was used exclusively for charitable purposes has been before our Supreme Court in the following cases:

Judge vs. Spencer, 15, Utah, 242.

State vs. Armstrong, 17 Utah, 166.

Parker vs. Quinn, 23 Utah, 332, 64 Pac. 961.

Lodge vs. Grosbeck, 40 Utah 1, Ann. Cas. 1914 C 940.

Odd Fellows Assn. vs. Co. Treasurer. 53 Utah, 111.

In the Spencer case, the Court used the following language, in regard to the claim of exemption:

“The presumption is that all exemptions intended to be granted were granted in express terms. In such cases the rule of strict construction applies, and, in order to relieve any species of property from its due and just proportion of the burdens of the government, the language relied on, as creating the exemption, should be so clear as not to admit of reasonable controversy about its meaning, for all doubts must be resolved against the exemption.”

In the Armstrong case, *supra*, the question involved was whether or not the Legislature had power to provide by statute that the Board of Equalization might remit or abate the taxes of insane, idiotic, infirm, or indigent persons, the court held that an abatement of the taxes in effect amount to an exemption, and that the Legislature had no such authority and used the following language:

“The difference in the sense of these terms therefore relates to the method, rather than the effect; for the ultimate result, whether by exemption or abatement, is precisely the same. In either case the property is relieved from the burden of taxation. Now it is apprehended that the intention of the framers of the constitution, by exempting certain property, was not so much to prevent an assessment and levy of tax thereon as to free it from the burden of maintaining the government. When the tax is abated or remitted after it has been levied, the same object is accomplished; and therefore the mandate of the constitution, that such burdens ‘*shall be equal and uniform*’ on all property within the state, except such as is exempt by the fundamental law, and that ‘every person and corporation shall pay a tax in proportion to the value of his, her, or its property,’ may be violated by either method. It is true that the statute does not permit the abatement of all the tax, as does an exemption under the constitution; but it is equally true that if the legislature has power to enact a statute releasing property, not exempt by the paramount law, from a portion of the tax, it has power to enact one abating all the tax on such property. The same legal principles apply in either case. *The meaning and intent manifest from the constitution are that no property shall be relieved from the burden of maintaining the government, except such as was defined and specified for exemption by that instrument.* No one would contend for a moment that the legislature of this state has power in express terms to exempt property from taxation, other than that enumerated for exemption in the constitution; and yet in the enactment of the statute in question the legislat-

ure has undertaken to indirectly exempt property not so enumerated. This is an attempt to do indirectly that which could not be done directly, and the statute therefore is in violation of the constitution, and is void, as in excess of legislative authority. To prevent the legislature from exempting property not included within the exemptions of the constitution, express words of inhibition were not necessary. The positive direction that "all property not exempt under the laws of the United States or under this constitution shall be taxed," and that the rate of assessment and taxation shall be 'uniform and equal', so that 'every person and corporation shall pay a tax in proportion to the value of his, her, or its property,' with the enumeration of the property exempted, contains an implication against an exemption of any other property by the legislature. That direction itself operates as a restraint upon the legislative power. *Cooley, Const. Lim.* 209; *Konold vs. Railway Co.*, 16 Utah 151."

In the case of *Parker vs. Quinn*, *supra*, the Relief Society, organized exclusively for charitable purposes, was the owner of a two-story building, the upper floor was used by the Society for holding its meetings, the lower floor contained two store rooms, one of which was rented for \$12.50 per month, and the other was being offered for the same rent. All the rental so received was used for charitable purposes; all the members of the society served as such without remuneration. The question involved was whether or not the property was used exclusively for charitable purposes and therefore exempt from taxation. The Lower Court held that the property was not exempt.

The Supreme Court held that the lower floor was subject to taxation, but that the upper floor, which was used *exclusively* by the society was exempt. The Court used the following language:

“It will be noticed that the provisions of the Constitution of the statute are practically the same, except that the statute omits the words “municipal corporations,” but this omission is not material in this case. *The exemptions thus expressly granted, as we have seen, form an exception to the general rule that every species of property within the State is liable to bear its just proportion of the public burden. Any property falling within the exception is released from this burden, and such release is justified on the theory that the State derives some peculiar benefit, whatever that may be, from such property.* Among the several classes of property exempt are ‘lots with the buildings thereon used exclusively for either religious worship or charitable purposes.’ *In the case at bar, the ‘relief society’ which owns and manages the property, over which the controversy arose, was organized and acts exclusively for charitable purposes. It ministers to the poor, sick and destitute of the community. Its purposes are excellent and the means adopted commendable, and no doubt the State is measurably benefitted by having its poor and helpless subjects under the benign protection and care of such a society. If, therefore, in the fundamental law, in addition to specifying lots and buildings thereon used ‘exclusively’ for charitable purposes, rentals derived from such buildings and used for such purposes were also enumerated, we would have no difficulty in this case in declaring the whole property, including*

the portion rented and held for rent, exempted from taxation, but the lawmakers did not see fit to exempt such rentals, in express terms, and we can furnish no aid by construction. Only such of the society's property, therefore, as is occupied and used 'exclusively' for charitable purposes is exempt from taxation. It follows that the exemption does not extend to that portion not appropriated by the society to its own use, but held as a source of revenue. Especially is this so since the value of each portion is ascertainable as appears from the findings of the court. Where, therefore, as in this case, a portion of certain property, owned by a charitable institution, is occupied and used by it for charitable purposes, and the other portion thereof is devoted to purposes of revenue, the portion used and occupied for charitable purposes is exempt, and the portion not so used and occupied is subject to taxation."

In the Groesbeck case, *supra*, the question involved was whether the Elks Home of Salt Lake City was exempt from taxes. Our Supreme Court held, by divided opinion, that it was. Justice Frick writes the dissenting opinion, and we believe that it will be conceded that he cites the great weight of authority in his dissenting opinion to the effect that even from the facts in that case the property should not be exempt. However, the Supreme Court did not over-rule the case of *Parker vs. Quinn*, but expressly approved of that case in the following language:

"The court held, (in *Parker vs. Quinn*) and properly so, that the portion of the building which was not used by the organization for *its*

*own purposes*, but was kept as an investment for business purposes, was not exempt from taxation."

In the Odd Fellows' case, *supra*, the question involved was whether the Odd Fellow's home was exempt from taxation. A portion of the building was leased and the rents were used for the purposes of the association. Our Supreme Court held that the property was not exempt from taxation. The Supreme Court, in that case also expressly observed the fact that the Elks case and Quinn case were harmonious in principal. It was contended in the Odd Fellows' case, that as long as the rents and income were used for the purpose of the association, that the building should be exempt. Our Supreme Court states counsel's position, and answers it in the following language:

"We submit that such a construction, in our judgment, would amount to an absolute perversion of the plain meaning and intent of the framers of the Constitution and the citizens of the state who afterwards voted for its adoption. If we will consider for a moment the situation to which such a construction could and might possibly lead, every person of average intelligence must at once arrive at the conclusion that such cannot be the meaning and intention of the constitution. To begin with, it must be conceded that the owners of property, to be exempt within the purview of the Constitution, are not limited to ecclesiastical or charitable organizations, but the exemption privilege is extended to the class of property mentioned, without regard to the



character of its owner. The owner may be a church organization, a charitable or fraternal organization, or it may be a private individual or a corporation. It will also be conceded, we assume, that a very large proportion of the taxpayers of the State of Utah annually contribute considerable sums to the maintenance of religious worship and for charitable purposes. The aggregate of these contributions would undoubtedly, amount to millions. Now, let us suppose that these taxpayers, whether individuals or corporations, should conceive the idea that, inasmuch as they intend to contribute in any event to these religious and benevolent purposes, they will do so in such manner as to avoid the payment of taxes on a substantial portion of their property. Each of them, in pursuance of this idea, invests in a lot or lots, with a building or buildings, to such an extent that the income derived from the rents, issues and profits of the property will pay for the upkeep and repair thereof and enough over to satisfy his conscience respecting his religious and charitable obligations. Not a dollar for private or corporate gain is within the contemplation of the owner, but in the utmost good faith the owner intends to use every cent of the income, except sufficient for the upkeep and repair, for religious or charitable purposes. The assessor appears on the scene; he attempts to assess the property, and the owner says he is using that property exclusively for religious worship, or that he is using it exclusively for charitable purposes and not for private or corporate benefit. Under the contention of counsel for appellant, we do not see why this could not be done. If it can be done by an ecclesiastical or

charitable organization it can be done by an individual or corporation who devotes the income to religious or charitable purposes. If such were done we have no means of knowing what the loss in revenue to the state would be, but the sum would unquestionably be so vast as to forever preclude the idea that the Constitution is susceptible of any such construction as that contended for by appellant. On this question we unqualifiedly approve that portion of the opinion in the Quinn case, heretofore quoted, wherein the learned justice says:

“If, therefore, in the fundamental law, in addition to specifying lots and buildings thereon used ‘exclusively’ for charitable purposes, rentals derived from such buildings and used for such purposes were also enumerated, we would have no difficulty in this case in declaring the whole property, including the portion rented and held for rent, exempted from taxation; but the lawmakers did not see fit to exempt such rentals, in express terms, and we can furnish no aid by construction. Only such of the society’s property, therefore, as is occupied and used ‘exclusively’ for charitable purposes, is exempt from taxation. It follows that the exemption does not extend to that portion not appropriated by the society to its own use, but held as a source of revenue.”

The question involved is of supreme importance, both to the taxpayers of the state at large and to the owners of property claiming exemption from taxation. For that reason we have quoted at considerable length from the opinion in the Quinn case, which we cannot consider in any other light than as conclusive and controlling in the present case.

Much has been said in argument upon the question as to whether or not a strict or liberal construction should be adopted in seeking to ascertain the meaning of the constitutional provision involved. In our judgment, as contended by respondent, "there is no room for construction." The language is plain, unequivocal, and unambiguous. The building itself, or the portion thereof for which exemption is claimed, as distinguished from the rent or income derived therefrom, must be used exclusively for religious worship or charitable purposes. This we believe to be the plain meaning of the Constitution, whether we adopt a strict or a liberal construction. The opinion in the Quinn case by an undivided court held that to be the true meaning, and, as before suggested, the Court in the Elks case unanimously adopted the same view, although disagreeing on other questions not pertinent to this appeal.

As to the question of a strict or liberal construction, if it were at all controlling in this case, we might suggest that appellant has no reason whatever to complain. A strict construction of the constitutional provision, as we understand it, would subject the entire building to taxation, for the reason that it is not all used exclusively for religious worship or charitable purposes. We are clearly of the opinion that the court in the Quinn case adopted an exceedingly liberal construction when it held that the property might be segregated for purposes of taxation."

The Groesbeck case is also to be distinguished from case at bar, for in that case the Court assumed that the Elks Lodge was a charitable institution, which as we have already pointed out plaintiff clearly is not. It was also said in the Groesbeck case that the social uses to

which the property was put were indirectly to promote the social aims of the organization, that the charity dispersed by fraternal societies consisted not only of material assistance, but of moral assistance also, which was the embodiment of sympathy and kindness, none of which elements appear in the record in case at bar.

The annotation to the Groesbeck case in Ann. Cas. 1914C at page 958, points out, that in the two other Elks Lodge cases which had then been decided, Mass. and Wisconsin, both cases held contrary to the Utah case—that the Elks home was not exempt as property used exclusively for charitable purposes.

In a subsequent case, Lodge vs. Koeln, Ann, Cas. 1916E, 784, (Mo.) the Missouri court also pointed out that the property of Elks Lodge No. 9, was used for lodge and club purposes and was not used exclusively for charity within the meaning and contemplation of the Constitution, and hence was not exempt from taxation. The Missouri Court held that the “*exclusive*” use provided for in the Constitution, “implied that all other uses be excluded.” The Missouri Court expressly refused to follow the Groesbeck case.

It will, therefore, be observed that the Utah cases are in harmony on the proposition that the property itself (not the rentals or revenues derived therefrom) must be used exclusively for charitable purposes. In the Quinn case, the Groesbeck case and the Odd Fellows case, the organizations were in each respective case charitable or-

ganizations—organized for charitable and fraternal purposes and for no other purpose. Such is not the case of plaintiff corporation. In the Groesbeck case the court found and held that the Elks Lodge was a charitable institution, and that in as much as the property was occupied and used by the lodge itself for lodge purposes, (which were admittedly charitable and fraternal) this court held that, within the contemplation of the Constitution, the property was used for charitable purposes and was therefore exempt.

The same distinction is made in the Quinn case, and also the Odd Fellows case. Both of these organizations were found and in each case held to be charitable organizations, organized for charitable purposes. That portion of the property which was directly occupied and used by the Relief Society was held to be used exclusively for a charitable purpose, for the Relief Society was organized for the purpose of dispensing charity. That portion of the building which was not directly occupied and used by the society itself, was held not to be exempt, even though the rentals received therefrom were devoted to the purpose and use of the society. The same distinction and rule is applied in the Odd Fellows case, and hence that portion of the building not directly occupied and used by the lodge itself, was held not to be exempt, although the rentals from this property were devoted to the purpose of the Lodge which were admittedly charitable.

It is submitted that the case at bar does not and can

not come within this rule. In the first place the plaintiff corporation was not and is not organized as a charitable institution. It has every ear mark of a business institution organized for pecuniary gain and profit and none of the ear marks of a charitable institution. In the second place, as we have already pointed out, the evidence conclusively shows that it is not the policy of the hospital itself to disperse charity to any of its patients. The doctors often forego their doctor's fees to poor patients, but the hospital fees must always be paid, either by the relief society, the bishop of the ward or club which brings the poor patient, or by the County, where the patient is impecunious and is not under the care of the Relief Society, bishop, etc.

The plaintiff hospital rents its beds to its patients for stipulated and fixed sums depending on the rooms selected by the patient; these charges are made to rich and poor patients alike. A bed in a ward is \$2.50 per day; a bed in a semi-ward is \$3.50 per day; a private room is \$4.00 and \$5.00 per day; depending on the room. It is true that in addition to the bed the patient also receives certain service and care by the nurses and such food and drink as the patient should have. But this is all covered and paid for by the patient in the hospital charges. The recipient pays for the service and accommodations which he receives.

Hence it is submitted that the various rooms occupied and paid for by the patients come exactly within the same

rule and provision as that portion of its property which the Relief Society rented out in the Quinn case, or that portion of the building, in the Odd Fellows case from which rentals were received by the lodge but which property was in each case held by this court not to be exempt from the payment of taxes because not used exclusively for charitable purposes within the provision of the Constitution.

Indeed, the property of plaintiff in the case at bar does not come within the same equitable reason and considerations as was, and could well be urged on behalf of the property so rented in the Quinn case, and also in the Odd Fellows case. There the rentals were, in each case, used and devoted to the purposes of the organization which purposes were admittedly charitable. In the case at bar the plaintiff organization or corporation is not charitable, it was not organized as a charitable institution, and does not use or purport to devote its earnings (rentals) from its property for charitable purposes, but proposes to set it aside as a sinking fund for future growth and expansion of the corporation.

The fact that the plaintiff corporation adopts a rule, in the form of an amendment to one of its articles, that it will not in the future declare any dividends to its stockholders, or pay its officers any salary, but will from time to time set apart the net profits arising from the operation of the hospital "as a sinking fund, to be used whenever, in the opinion of the Board, the same should be used for

the maintenance, enlargement or improvement of the hospitals or other corporate properties," does not present any equitable reason that we can discern why that corporation should not pay its taxes as the constitution and law of our state provide.

It is of course obvious that the stockholders could at some future time, when a large sinking fund has thus accumulated, again be called to meet and vote to change or amend article six so as to permit the accumulated sinking fund to be divided among the stockholders in the form of dividends; or if the hospital buildings, equipment, etc., had been sufficiently enlarged, from such accumulated sinking fund, article six could readily be changed back so as to carry out the original purpose of the corporation and thereafter permit dividends to be declared from the net earnings of the corporation, and the stockholders of the corporation would thereby have received the full benefit of avoiding payment of taxes for the intermittent period of years. Undoubtedly this amendment was made and intended for the best interest of the plaintiff corporation itself, not for the best interest of the public. It should be noted that the Secretary in his Notice of Stockholders' meeting said: "It is the opinion of the Board of Directors that this amendment should be made *as it would be for the best interest of the hospital.*"

It must be very obvious to the Court that the only purpose of the purported amendment to Article six was an excuse to avoid payment of its taxes. The corpora-



tion has paid its taxes each year since its incorporation in 1914, up to 1928, and during all of this period, it is admitted both in the pleadings and the testimony, that its policy and method of operation and charging and collecting its hospital bills from all patients who entered its hospital for care and treatment has been the same. There has been no change in the policy of the institution. That being true, why should the plaintiff's property be exempt from taxes for the year 1928 as distinguished from prior years? Plaintiff's counsel gave as his answer in the lower court, that due to this amendment to article 6, no officer or stockholder of the corporation did in 1928, nor will in the future, make a dollar or a dime from the corporation, but all of the earnings of the corporation are to be plowed back into that institution for its enlargement and providing better hospital facilities etc., so as to better serve and care for the general public and particularly its patients.

This merely amounts to saying that if the institution had more money to spend for its development and purchase of the latest and most modern equipment, etc., then it would be better able to serve and care for its patrons.

That is not only true of the business of conducting and operating a hospital, but we believe, the merchant, the banker, the cobbler, the baker, the manufacturer, and all the rest could truthfully make the same argument, e.g., if they had more money to use and devote to their respective business institutions, to make proper and necessary enlargements, additions and betterments, and in-

stall the latest and most modern equipment, etc., that then they would in each case better serve and care for their respective patrons and customers.

Undoubtedly a good many private business institutions would be very glad to thus amend their articles of incorporation, and provide that in the future all the earnings of the corporation shall be set aside as a sinking fund, and that it shall, from time to time, be expended for the proper enlargement and betterment of the corporate properties as the Board of Directors may deem for the best interest of the corporation.

If such method for avoiding payment of taxes is legal for a hospital, organized and conducted as a private corporation for pecuniary profit and gain, then there seems no reason why other business institutions may not adopt similar amendments to their articles of incorporation, and thus also escape payment of taxes. The mere statement of such a proposition is its own answer. To sanction such conduct and method for avoiding payment of taxes, strikes at once at the very root and foundation of our government and nullifies the Constitution.

In *County vs. Sisters of Charity*, 44 Pac. 252 (Colo.) the Colorado Constitution expressly exempted “\*\*all\*\*” hospitals for the care of the sick, whether supported in whole or in part by charity.” But even under such liberal provision of the Constitution, it was held that lands occupied by and used in connection with such hospitals are not exempt.

"It is a well-settled rule that statutes exempting persons or property from taxation are to be strictly construed, and that exemptions are not to be extended, by judicial construction, to property other than that which is expressly designated by law." Cooley, *Taxation*, pp. 204-205.

7 C.-J. 1051. "Where the exemption of property from taxation is involved, the distinction between the benevolent or charitable associations and beneficial associations is sharply drawn. Laws of exemption are to be strictly construed. A charity is held to mean a public charity, one whose benefits are extended to needy persons generally, without regard to their relation to the members of the society, or to the fees paid. A beneficial society whose beneficence is confined to the members, their families, dependents or friends, and depends upon the contributions made, is not a charity, but a private institution for the mutual advantage of the members. The property of such a society is therefore not exempt from taxation under a law exempting the property of charities."

*City of Knoxville vs. Fort Sanders Hospital*, 257 S. W. 408 (Tenn.). Where hospital with research laboratory and X-ray outfit was erected and maintained by certain physicians as a place to treat their patients and to perform their operations and to conduct a school for training nurses and a big majority of patients were charged very substantial prices for their accommodations, the property was held not exempt from tax under a statute similar to Utah.

*City of San Antonio vs. Santa Rosa Infirmary*, 249 S.

W. 498 (Tex.). Hospital which received no gift for its foundation but purchased its property from another corporation and assumed a legal obligation to pay therefor and which paid all of its operating expenses from funds received from patients who were able to pay for their care, and were charged ordinary hospital rates, and which hospital, in addition, earned a profit to apply on the purchase price of the property, and on additions and improvements, is not a purely public charity and not exempt. The fact that a hospital which paid its operating expenses and realized a profit from patients who were able to and did pay for their care, devoted a small portion of its activities to the care of patients unable to pay therefor, does not make it a charitable institution entitled to exemption from taxation.

In the case, *City of Vicksburg vs. Sanitarium*, 78 So. 702, (Miss.) The court held that a hospital treating some charity patients, but primarily for pay, that is, primarily for treatment of those who could pay, was not exempt under a statute exempting "hospital or other charitable use."

"Where a hospital is conducted for the use and profit of persons engaged in the practice of medicine and surgery, or as an adjunct to a medical college conducted for the profit of its owners, it cannot be regarded as a charitable institution, and is subject to taxation."

*City of Knoxville vs. Ft. Sanders Hospital* (Tenn.)  
257 S. W. 408.

Mayor and Aldermen vs. Vicksburg Sanitarium (Miss.) 78 S. W. 702.

Gray Street Infirmary vs. City of Louisville (Ky.), 65 S. W. 11.

The courts often state, and it is undoubtedly a general rule followed in the majority of cases, that a hospital institution which is admittedly charitable and which was founded and erected as such, does not lose its charitable or eleemosynary character by reason of the fact that it charges and collects from such patients as are able to pay for the actual necessities furnished, for the amounts thus received are not for private gain, but contribute to the more effectual accomplishment of the purpose for which the charity was founded, to dispense charity to those who are in need of its services, and who are unable to pay.

Downs vs. Harper Hospital, 25 A. L. R. 602, 5 (Mich.).

Trustees of Orphan School vs. Louisville, 40 L. R. A. 119 (Ky.) But this rule does not apply in case at bar. Plaintiff was not organized nor created as a charitable institution nor did it take any patients in as pure charity patients..

The *primary use* to which the property is put it to be considered in determining whether it falls within the terms of the exemption. Grand Lodge vs. Board of Review, 117 N. E. 1016 (Ill.).

In many cases where the property has been held exempt it has been on the ground and assumption that since the Lodge, or other owner, was conducted for charitable or benevolent purposes only, the property in question was

to be considered as presumably used exclusively for such purposes.

Lodge vs. Cass County, 113 N. W. 167 (Neb.).

Such reasoning and presumption can not be applied in the case at bar, for the plaintiff corporation was not organized as a charitable institution, but as a corporation organized for pecuniary profit.

A clause in a Constitution, exempting property "used exclusively for public charity", has often been declared to refer not to the character of the corporation or association owning the property for which the exemption was sought, but to the nature of its use.

Grand Lodge vs. Taylor 226 S. W. 129 (Ark.).

Chaffee County vs. Denver R. R. Employees, 22 A. L. R. 902, 203 Pac. 850 (Colo.).

Lacy vs. Davis 83 N. W. 784 (Iowa).

By the word "*Charitable*" in a statute exempting property used exclusively for charitable purposes, is meant a practical philanthropy and not merely the teaching and encouraging of unselfish principles.

Scottish Rite Bldg. Co. vs. County, 17 A. L. R. 1020 (Nebraska).

Vogt vs. Louisville, Ann. Cas. 1918E 1040 (Ky.).

In Atty. Gen. vs. Detroit, 71 N. W. 632 (Mich.) the statute contained the following exemption: "Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions, incorporated under the laws of this State, with the buildings

and other property thereon, while occupied by them solely for the purposes for which they were incorporated." In holding that the property of the Masonic Temple Assn., was not exempt thereunder the court said:

"It is not enough in order to exempt such associations from taxation, that one of the direct or indirect purposes or results is benevolent, charity, education, or the promotion of science. *They must be organized chiefly, if not solely, for one or more of these objects.*

"Where contributions are made by members who in turn are entitled to certain benefits from the claimant for exemption, bestowing such benefits cannot be deemed charity, the benevolent provisions are based upon sufficient legal consideration, and are in the nature of insurance, or a mutual benefit society."

State Council vs. Board of Review, 64 N. E. 1104 (Ill.)

Royal Highlanders vs. State 7 L. R. A. (N. S.) 380 (Nebraska).

In Re: Linen & Woolen Drapers Inst. L. T. N. S. 949 (Eng.).

The rental of a portion of a building belonging to a Lodge, although devoted to the purposes of the Lodge, prevents exemption under a statute exempting from taxation property "*used exclusively*" for purely charitable, 50 L. R. A. 191 (Mo.).

Society vs. Kelley, 42 P. 3 (Ore.).

Odd Fellows Bldg. Assn., 177 Pac. 214 (Utah).

Grand Lodge of Masons, 78 Atl. 973 (Vt.)

In *Lodge vs. Redus*, 29 So. 163 (Miss.) the court said:

“It is said in argument that income is used for charity, and that makes it the same in effect as if the property itself was used for charity. But that is not the letter of the law, nor its spirit.”

In *Phillips vs. St. Louis R. R. Co.*, 17 L. R. A (N. S.) 1167 (Mo.) The R. R. Co. organized a hospital for the benefit of its employees who contributed to its support. The Court said:

“It has but few of the ear marks of a voluntary benevolent association, nor are there any ear marks of a public charity. What is received is paid for by the recipients. Under the weight of authority it cannot be held to be a charitable institution.”

In the *New Standard Club vs. McRaven*, Ann. Cas. 1918E 274 the Mississippi Court held: “One claiming to fall within the statute exempting property from taxation has the burden of proof.” The New Hampshire Court in *St. Pauls Church vs. City of Concord*, Ann. Cas. 1912 A, 350, held: “The burden is upon one claiming his property exempt from taxation to establish the fact by clear proof that the legislature so intended.”

That oral testimony is not admissible to show the character of an institution was decided in *Bishop of St. John's vs. Treasurer*, 86 Pac. 1021, at page 1023, the Colorado Court said:

“We think the objection was well taken. The character of the institution is to be determined by the purpose of its construction and the man-



ner of its operation, and not by the opinion of any individual as to whether its work conforms to his notion of charity or not."

In the case of *Gitzhoffen vs. Sisters of Holy Cross Hospital Ass'n*, 88 Pac. 691 (Utah) our Supreme Court also held that the question whether or not a hospital was a charitable institution and the purpose of its organization was to be determined from its Articles of Incorporation, and not from oral testimony; and in that case the court held: "that the articles of incorporation and the statute showed the corporation in question to be one for pecuniary profit, and not charity."

An instructive note is also found in 16 L. R. A. (N. S.) 830, giving the definitions and charitable character of claimants of exemption. The meaning of "charity" as used in the constitution, is "a gift to promote the welfare of others,"—23 LRA 545 (Pa.) To entitle a corporation to exemption under statute relieving from taxation charitable institutions, etc. it is essential that the paramount purpose be one of the objects named in the statute, 42 LRA 281.

Another instructive annotation is found in 7 Ann. Cas. 39, where the annotator shows that the great majority of the cases hold with the Illinois case there reported, that property held by a fraternal beneficial society for the use of its members is not property held for charitable purposes within the meaning of the constitutional provision exempting property held for charitable purposes from taxation, and that being true it must certainly fol-

low that the mere fact that the hospital has decided to put all its earnings in a sinking fund and expend the same from time to time in the further growth and developement of the institution does not make its property exempt from the payment of its taxes.

At the hearing before the trial court the plaintiff's counsel cited a number of cases holding that hospital property is used exclusively for charitable purposes, although the hospital charges the patients who enter the institution for care and treatment. But it is submitted that all those cases are to be distinguished from the case at bar. For exemple: in the case of *St. Elizabeth Hospital vs. Lancaster County (Neb.)* 189 N. W. 981; the court stated that, "the hospital property is owned and the hospital was founded by the Franciscan Sisters that the general purpose of the sacred order to which these sisters belonged is to nurse the sick, and care for the orphans, they are prompted only by the love of God, and are bound by a vow of poverty. The property owned by them is used for the purpose for which they have dedicated their lives." The court also stated in that case that the burden of government in caring for the poor is borne by that hospital. It is very evident that such facts are widely different from the facts in case at bar.

Likewise, in the case of *Sisters of St. Francis vs. Board of Review*, 83 N. E. 272. This likewise was a case where the hospital property was owned by the Sisters of St. Francis. The court stated, it was organized, "not for

pecuniary profit, but for the purpose of conducting a hospital and training school for nurses. *Patients who are without money are cared for without any charge being made and are denominated, "charity patients"*. No such facts appear in the case at bar. In our case all patients are charged if the patient is impecunious the bishop of the ward, the relief society, etc., or the County must pay the hospital fee.

In the case of *New England Sanitarium vs. Stoneham* 91 N. E. 385 (Mass.) The court found that the hospital was incorporated "for the purpose of founding a hospital or charitable asylum, for the care and relief of indigent, or other sick or infirm persons," etc. This was the main purpose of founding the hospital, although the articles also provide that the hospital may receive pay patients. No such provision are to be found in the articles of incorporation of the plaintiff hospital in case at bar. The court also observed "if petitioner had decided to receive only those patients who were able to pay until from the accumulated profits the institution could be maintained solely for the relief of the poor, the real estate during the period of accumulation would not have been occupied exclusively for charitable purposes within the meaning of the statutes." The hospital in case at bar is charging all patients and is accumulating its earnings in a sinking fund, \$5000, the net earnings for the year was set aside in such sinking fund for the year 1928. Yet plaintiff claims its property should be exempt for that year.

In the *Lutheran Hospital vs. Baker*, 167 N. W. 148 (S. D.), the court stated that the "plaintiff is organized under the civil code relating to benevolent corporations. The articles provide that its plan of operation shall be to organize and establish a suitable hospital as a church charity or benevolent society. The articles of incorporation and the charter permit of no capital stock to be issued. *The association provides that in case the patient is unable to pay no charge of any kind is made, and that the attending physician shall in such cases donate his services. When the patients are unable to pay the regular rates they are only asked and required to pay what they reasonably can.*" It will be readily seen that all of these facts widely distinguish the above case from case at bar. In the above case 95% of the patients are pay patients and 5% were pure charity patients, many of the pay patients were probably only part pay. The court said: "We are of the opinion that the appellant is a corporation or society organized and conducted exclusively for charitable purposes and that its said property was and is used exclusively for such purposes." In the *Baker* case the court reasoned as did this Court in the *Quinn*, *Groesbeck* and *Odd Fellow's* cases. Such reasoning as we have seen, can not be applied to the case at bar because plaintiff corporation is not and was not organized as a charitable institution.

We fully agree with the principal laid down in the *Baker* case, that an institution founded as a purely public charity does not lose its character as such merely from the fact that it receives revenue from, or charges its pat-

ients who are able to pay. The South Dakota Court distinguished the Baker case from the case of State vs. Board of Equalization 92 N. W. 16, in which case there was evidence that part of the hospital property of the charitable institution was being rented out, and the rents devoted to the upkeep and maintenance of the hospital.

We do not have access to several other cases cited by plaintiff's counsel, but we believe that everyone of the cases can be distinguished in the same manner as the cases just cited.

If this court shall be of the opinion that the evidence in this case is sufficient to warrant the Findings of the Court that the plaintiff's property was used exclusively for charitable purposes and is therefore exempt, then we respectfully submit and urge that the trial court erred in denying the defendant's motion for a new trial, on account of error of the court in excluding the testimony of defendant's witnesses in proof of defendant's allegation in his answer that plaintiff corporation charged large and substantial fees in 1928, *and for many years prior thereto* from all its patients, and that it had on various occasions during that period held and detained patients at the hospital until the hospital fees were paid, these allegations were specifically denied by the reply thus putting in issue the conduct and operation of the plaintiff hospital not only for the year 1928, but for many years prior thereto.

In other words, the period of time put in issue was not only the year 1928, but *many years prior thereto*, and

upon such issues the defendant's counsel prepared their case. We accordingly had a large number of witnesses who covered eight or ten years, and who had had the experience of being detained at the hospital or having their loved ones held until the hospital fees were paid. But the court arbitrarily refused to allow these witnesses to testify. We submit that defendant's evidence and offer to prove by these witnesses that not only did the plaintiff hospital charge all patients, including poor patients who were unable to pay, but upon many occasions had actually detained the patient and refused to allow him or her to leave the hospital until the hospital fees were paid, was admissable under the issues formed by the pleadings.

We submit that the action of the trial court in thus arbitrarily refusing to permit these witnesses to testify to such conduct on behalf of the plaintiff hospital was reversible error in view of the issues which had been made, and in view of plaintiff's contention that its property was exempt because used exclusively for charitable purposes.

There is no contention on behalf of the plaintiff that the policy in 1928 was different in any respect from prior years. In fact, Dr. D. C. Budge, stated the policy was the same. As stated in our affidavit for a new trial, had the issues been narrowed down to the year 1928, by the pleadings, then defendant would then have concentrated its efforts upon securing witnesses to testify as to the conduct of the hospital covering only that year. But inasmuch as the issues were made broader and were made to

cover not only the year 1928, *but many years prior thereto*, we had a right to reply upon the pleadings and to prepare our case accordingly, and the court's ruling in excluding this offered testimony by defendant covering said period, and which would affirmatively show the real policy of plaintiff hospital, was reversible error.

Respectfully submitted,

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