

1950

In the Matter of the Estate of Robert L. Proudfit : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: 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.

Thatcher & Young; Attorneys for Respondent;

Recommended Citation

Brief of Respondent, *Proudfit*, No. 7405 (Utah Supreme Court, 1950).
https://digitalcommons.law.byu.edu/uofu_sc1/1206

This Brief of Respondent 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.

Case No. 7405

In the Supreme Court of the State of Utah

In the Matter of the Estate of

FILED

ROBERT L. PROUDFIT, JAN 30 1950

Deceased

Clerk, Supreme Court, Utah

RESPONDENT'S BRIEF

THATCHER & YOUNG,
Attorneys for Respondent.

TABLE OF CONTENTS

	Page
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS	2
ARGUMENT	2
Point 1: The deductions allowed are proper “costs” or “expenses” of administration.....	2
(a) The expenses were incurred in the pre- servation of decedent’s estate which is conceded to be properly deductible.....	2
(b) The items claimed as deductions are proper expenses of administration as defined by the Probate Code.....	3
(c) The allowance of the claimed deduct- ions as expenses of administration by the Trial Court was an exercise of ju- dicial discretion which should not be disturbed	8
(d) Appellant’s contention for an adminis- trative construction of Section 80-12- 8 is unsound, because.....	9
(1) The Tax Commission is not charged with the administrative interpreta- tion of the act, and.....	9
(2) The construction contended for by the appeal is contrary to clear law, and	10
(3) The stipulated facts do not show an administrative construction	10

	Page
(e) Federal Internal Revenue regulations are not applicable and Federal decisions are against appellant's contention.....	11
(f) Rents are properly applicable to estate obligations, and expense incident to their collection is an administrative expense	13
Point 2: The claimed deductions are also allowable as debts "owing by the decedent at the time of his death" under Section 80-12-8, U.C.A. 1943	14
Point 3: It is immaterial whether the expenses questioned were paid out of rental income or out of the corpus of the estate.....	18
CONCLUSION	20

AUTHORITIES CITED

Court Decisions

Adams vs. Commissioner of Internal Revenue, 110 Fed. 2d 578.....	11, 12
In re Bradfield's Estate 221 Pac. 531 (Mont.)	14
Estate of Fannie R. Brewer Docket No. 99711, B. T. A. Dec. 26, 1941; 10 Prentice Hall B. T. A. Mem. Dec., paragraph 41, 574.....	11, 12
Burdick vs. Kirkovecz 254 Pac. 684 (Cal.)	17
In re Cowan's Estate, 98 Utah 292 99 Pac. 2nd 605.....	9

	Page
In re Hansen's Estate, 55 Utah 23, 184 Pac. 197, 204	5, 7, 8
Johnson vs. Johnson 286 Pac. 109 (Colo.).....	17
In re Loscolzo vs. Eggner 78 Atl. 607 (Del.).....	14
Nathan vs. Freeman 225 Pac. 1015 (Mont.).....	17
E. C. Olsen Co. vs. State Tax Commission 168 Pac. 2nd, 324, 332.....	10
In re Roessler's Estate 160 Atl. 370 (N. J. Ea.).....	14
Utah Concrete Products Company vs. State Tax Commission, 101 Utah 513, 125 Pac. 2d 408.....	10

AUTHORITIES CITED (continued)

Textbooks

50 Am. Jur. p. 345, et. seq.....	4
2 Bancroft's Probate Practice Section 528, pp. 967, et seq.....	17
3 Bancroft's Probate Practice, Section 964	17
3 Bancroft's Probate Practice, Section 785	18

STATUTES AND REGULATIONS CITED

	Page
80-12-8 U.C.A. 1943.....	2, 3, 4
80-12-35 U.C.A. 1943	9
102-11-3 U.C.A. 1943.....	3
102-11-24 U.C.A. 1943.....	4
102-12-4 U.C.A. 1943	13
Session Laws of Utah, 1943	
Chapter 88, Section 1.....	4
U. S. Internal Revenue Code,	
Section 812 (b)	11
Title 50 U.S.C.A. App., Section	
925, as amended by Act of July 30,	
1947, Ch. 361, Title I, Section	
101, 61 Stat. 619 (Emergency Price	
Control Act of 1942, as amended).....	16
Regulations 105, Sections	
81-32 and 81-35 (Federal Bureau	
of Internal Revenue)	11
Controlled Housing and Rent Regulations	
Section 825.1 as amended July 1, 1948,	
Section 3	16
Housing and Rent Act of 1947,	
Section 209	16
Controlled Housing Rent Regulation	
Section 825.6 as amended April 5, 1949.....	16

IN THE
SUPREME COURT
OF THE STATE OF UTAH

In the Matter of the Estate of

ROBERT L. PROUDFIT,
Deceased

STATEMENT OF FACTS

Respondent agrees with Appellant's statement of facts. However, we are constrained to add that it is not disputed that if any of the services to tenants which give rise to the charges in controversy had been discontinued the tenants would have brought suit immediately for treble damages under the Federal Price Control Act. Such suits would obviously waste the assets and property of the estate. All of the disputed expenditures were made prior to the filing of the inheritance tax return, and while the property was subject to Federal Rent Control Regulations. (R. 58 and 37)

Only actual expenses were claimed by the Respondent Executrix as deductions. Expenditures for capital improvements, such as installation of a sprinkling system, were excluded by her from the deductions claimed (R. 53).

All of the items claimed are the reasonable value of the services and facilities obtained by Respondent

Executrix, and all of them were necessary to preserve the estate property (R. 53). The testimony in this regard was not disputed.

STATEMENT OF POINTS RELIED ON

Respondent relies on the following points:

1. Each of the deductions allowed by the trial Court and listed in Appellant's Statement of Errors was properly allowed as costs or as expenses of administration under Section 80-12-8 U.C.A., 1943, as amended.

2. If not so allowable, each such deduction was properly allowed under said section as a debt owing by decedent at the time of his death.

3. It is immaterial whether the expenses questioned were paid out of rental income or out of the corpus of the estate. (Appellant's brief, Question (3), page 10.)

ARGUMENT

Point 1. *The deductions allowed are proper as "costs" or "expenses" of administration.*

(a) At the outset we wish to call attention to one aspect of this point which, it is believed, should determine this appeal in favor of Respondent.

Appellant concedes on page 11 of its brief that "an expense incurred in the preservation of decedent's estate is a cost of administration" and is properly deductible. This is of course the reasonable and general rule. The testimony of Respondent's manager that all the claimed

deductions were necessary to preserve the estate was not disputed or impeached and must be taken as true. (Its verity will become quite apparent as the nature of each item is considered hereafter.) It follows from this alone that the trial court's order allowing the deductions should be affirmed.

(b) But there are additional grounds for affirming the order appealed from.

The statute, Section 80-12-8, U.C.A., does not define the term "Costs of Administration" nor the term "Expenses of Administration." Nor has the Tax Commission promulgated any official regulation defining these phrases. However, the Probate Code prescribes the mandatory duties of the Executrix in administering an estate, and directs that she be allowed her expenses incurred therein. From a consideration of the *duties of administration* there arises by necessary inference an inclusive definition of the *expenses of administration*. Anything necessarily or reasonably expended in the discharge of a duty of administration is necessarily an *expense of administration*.

What, then, are the duties of administration?

Section 102-11-3, U.C.A., 1943, provides:

"The executor . . . is entitled to, and *must* take possession of, all the real and personal estate of the decedent, and *shall receive the rents and profits* of the real estate until the estate is settled or delivered over by order of the Court to the heirs or devisees; and *must keep in good tenable repair all houses, buildings and fix-*

tures thereon which are under his control . . .”
(Italics added.)

And Section 102-11-24, U.C.A. 1943, provides:

“He (the executor) shall be allowed all necessary expenses in the care, management and settlement of the estate, including reasonable fees paid to attorneys for conducting the necessary . . . suits in court . . .”

These sections were on our statute books as early as 1898, and had long been in effect when the legislature, in 1943, amended Section 80-12-8, U.C.A. 1943, to provide for the first time an inheritance tax deduction for “costs and expenses of administration,” instead of merely for “Court costs” as had been provided until that recent date. See Session Laws of Utah, 1943, Chap. 88, Section 1.

Obviously, where out tax statute, without defining specially the terms it uses, refers to the “administration” of estates and the “expenses” thereof, the long standing statutes defining the duties of administration and providing what expenses are allowable to the administrator, are in *paria materia*, and must be construed together. Generally statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected, homogeneous system.

50 Am. Jur., p. 345, et seq.

It seems clear then, that the intention of the 1943 legislature was to allow as deductions all the expenses incident to the collection of rents from real estate, the expense of keeping all houses, buildings, and fixtures

thereon in good and tenantable repair, and the expenses of the care and management of the estate, as these are all official duties required of him. Any other construction would not only violate the rule of construction referred to, it would also largely abrogate the effect of the 1943 amendment to the tax statute, and it should not be assumed that the legislature changed and broadened the words without intending to change and broaden the meaning.

This court has had occasion to construe the two quoted sections of the Probate Code in the case of

In re Hansen's Estate, 55

Utah 23, 184 Pac. 197.

The Court held that under the provisions of those sections the expenses of making repairs to existing buildings, *such as putting in new floors*, or putting on a new roof, or repairing existing fences, is a proper expense of administration. The Court further held that the provision for allowance of necessary expenses in the care and management of the estate is even broad enough to include such permanent improvements on the land *as are necessary for its occupancy and to preserve the estate*.

That case really goes even farther than is here necessary to a decision affirming the order appealed from.

For here we have expense:

1. For garden labor to maintain and preserve lawn, shrubs, trees and flowers with which the real estate

was improved. The Court, we submit, will take judicial notice that in this climate land once cultivated, when neglected and without irrigation or cultivation, rapidly loses its value. It will even become a public nuisance, overgrown with noxious weeds, subjecting the person responsible to civil and criminal liability.

2. For labor and management service—obviously necessary on so large a property to preserve the estate and to discharge the executrix' duty to collect the rents for the account of the estate.

3. For repairs to the heating system. This item is within the exact letter of the statute and of the Hansen case. Moreover, a complex mechanism, once out of order, inevitably and rapidly deteriorates further unless repaired immediately.

4. For heating the buildings. It is to be remarked that all houses were heated by a central system, so that the individual tenants could not themselves heat their apartments. And we think the Court will take judicial notice that no unheated house in Ogden was "tenantable" in the "Great Winter" of 1948-49. Furthermore, without at least minimum heating the pipes would freeze and burst and the estate would suffer waste and material deterioration. Finally, the executrix took over this property at the death of the testator *subject to the rights of the tenants therein*. One of their rights, guaranteed by the Federal Price Control Act and the Rent regulations, was to have the premises heated. The executrix had no right to discontinue this service. If she had attempted so to do she would have been com-

pelled by administrative and Court order to resume, and would have been subject to expensive legal action for trebled damages, which would have wasted and depleted the estate. (Of this, more later.) Nor could she have performed her duty to collect rents while breaching the estate's duty to heat the buildings. She expended only what she was compelled to expend to preserve the estate and to perform her statutory duty. How then can it be said that this expenditure was not an "expense of administration"?

5. For "general repairs" necessary to maintain and preserve the estate. This included repairs of broken windows, blinds, plumbing and the replacement of a floor which had been ruined. All are within the letter of the statute and the Hansen case. All were mandatory duties of the executrix.

6. For (a) electric power furnished for street or court lighting and for operation of the stoves and refrigerators, and (b) repairs to stoves and refrigerators. The furnishing of power was mandatory under the Rent Control regulations, as was the heating previously discussed. Outside lighting is also a reasonable safety precaution to protect against mischief and hence is an expense of administration. Repair of fixtures has already been discussed. It also was required by rent control.

7. For water (a) used to irrigate and preserve the real estate (previously discussed) and (b) supplied to tenants (as required by rent control and testator's lease) for domestic and culinary purposes. Surely at least

some of this domestic water was used to clean and preserve the improvements.

8. For insurance premiums on estate improvements. Surely here is an expense reasonably undertaken purely for the preservation of the estate.

It is respectfully submitted that all items fall within the letter and the purpose and intent of the tax statute authorizing deduction for "costs and expenses of administration" as properly constructed in the light of the Probate Code provisions outlining the duties of administration.

(c) There is further guidance to be gained from

In re Hansen's Estate, 55 Utah
23, 184 Pac. 197, 204,

where this Court, in considering what are expenses of administration, stated

"It is impossible to lay down any hard and fast rule to govern in matters of this kind. Much must necessarily be left to the judgment and sound discretion of the trial judge . . ."

In this case the trial judge has properly exercised his judgment and sound discretion to allow the deductions in question as expenses of administration, all as reported and returned to the Court. This Court, in this case should not interfere with the trial judge's exercise of his discretion, in the absence of a showing of manifest abuse thereof. Certainly no such showing has been or can be made here.

(d) Appellant in its brief contends that this Court should reverse the trial Court and upset its exercise of discretion because the Appellant's agents have for four years followed a practice of disallowing such deductions. Appellant's contention is unsound for several reasons.

First, Appellant is merely a collector of the inheritance tax, and in respect thereto does not exercise the quasi-judicial administrative function resulting in rulings and decisions which give rise to a persuasive or recognized administrative construction. In the case of inheritance tax the District Court (in Probate) alone has jurisdiction to make such rulings. Section 80-12-35, U.C.A. 1943. This has been recognized by the Appellant collector in practice since the inception of the inheritance tax, for it has never made any order fixing or determining deductions, or the tax itself, as to an estate in probate, but all such questions have been uniformly referred to the Court. It is also interesting to note that the Appellant Commission has never attempted to promulgate a regulation on the subject. The case is quite otherwise, of course, with the sales and income tax. And, so far as we are advised, the specific question at bar has never been submitted to a District Court for a ruling since the statute allowing deduction of administrative expense was enacted in 1943.

We doubt that this point was called to the Court's attention when it was considered In re Cowan's Estate, 98 Utah 292, 99 Pac. 2d 605, cited by Appellant here. Moreover, in that case the *District Courts* had for more

than 20 years ruled on the issue there involved. The case cited is not in point.

Second, the practice of the Appellant Commission in this regard is contrary to the clear meaning of the law, and hence the doctrine is inapplicable. See

Utah Concrete Products Company vs.

State Tax Commission, 101 Utah 513,
125 Pac. 2d 408.

cited in Appellant's brief.

Third, the facts stipulated do not show an administrative interpretation within the rule. In the case of

E. C. Olsen Company vs. State Tax
Commission 168 Pac. 2d 324, 332.

cited by Appellant, the Court says:

“The facts of this case do not show a practical interpretation of the statute by the Tax Commission. No regulations were passed specifically covering the questioned sales. Neither is it shown that the Commission acted in close harmony with the legislature in respect to legislation or proposals or as an advisory body to the Legislature in reference to these or similar articles during the time they were not taxed with knowledge that they were not taxed. . . Oral statements of Tax Commission auditors do not amount to administrative construction by the Commission.”

There is no administrative construction of the statute here in question to which the Court can give consideration, serious or otherwise.

(e) Absent its own regulation the Appellant Commission seeks comfort in Regulation 105, Sections 81-32 and 81-35, promulgated by the Federal Bureau of Internal Revenue, the Appellant stating that the Utah Tax Commission is guided, whenever possible, by Federal Regulations.

We submit that these are entirely irrelevant. In the first place the Federal *statute* on the subject provides for the deduction of such administrative expenses "as are allowed by the laws of the jurisdiction . . . under which the estate is being administered," so that properly the Bureau of Internal Revenue must look to our Probate Code and our Courts, rather than vice-versa. See U. S. Internal Revenue Code, section 812 (b).

In the second place the Federal Courts themselves have allowed deductions for analogous expenditures as expense of administration in cases which in many respects are not so strong as the one now before this Court. See

Adams vs. Commissioner of Internal Revenue,
110 Fed. 2d 578,

and

Estate of Fannie R. Brewer, Docket No. 99711,
B.T.A., December 26, 1941; 10 Prentice-Hall B.
T.A. Mem. Dec., paragraph 41, 574.

Appellant contends that the expenses claimed as deductions here were unnecessary and were not made in good faith for the benefit and preservation of the estate, but were incurred primarily in the production of rental income for the benefit of the devisee. If true, this con-

tention might render less applicable the Adams and Brewer Estate cases cited above. But it is not true. The manager's testimony, which was not attacked, and which the trial Court believed and found to be true, was that all these expenses were necessarily incurred to preserve the estate (R. 53), and that under Government fixed rentals the operation was not a money paying proposition (R. 57).

And, as has been shown, every deduction claimed (which did *not* include all of the expenditures in connection with the operation) was either in performance, or a necessary prerequisite to performance of one or another duty enjoined by law upon the Executrix, and which was required to be performed in the course of administration. Had she failed or refused to perform, the estate would not have been preserved; it would inevitably have been wasted and depleted in several obvious ways. How can it be said that in making expenditures forced upon her by law she was acting primarily for the profit of the devisee, even though in this case it so happens that she is also the devisee? The devisee and the executrix are separate legal entities, and in any other case they would be likely to be different persons.

Under these circumstances the fact that part of the expenses were a necessary incident to the collection of rent accruing after the date of testator's death is immaterial. The property was rented at and before that date. Under Rent Control regulations she could neither terminate the tenancy nor refuse the established services previously rendered to the tenants.

(f) And as a matter of fact the collection of the rents was necessary in order to raise money to pay debts, taxes, and expenses of administration. A glance at the inventories (R. 14 and 19) discloses that there was less than \$5000 cash in the estate and that the only liquid asset was First Security Corporation stock worth \$2525.00. On the other hand expenses and obligations, including Federal and State Inheritance Taxes, obviously total substantially more than \$25,000.00. The fair inference is the fact: the executrix' prime motive is, first, to preserve the estate intrusted to her, and second, to find some way to raise the money necessary to pay the expenses, debts and obligations. Any realizable profit, as suggested by Appellant, was just out of the question.

The rent, of course, like the property of the estate, was subject to proper disposition by the executrix in the course of administration and the discharge of the obligations of the estate. This is made abundantly clear by the provisions of section 102-12-4, U.C.A. 1943, providing that real estate is to be distributed only when it does not appear that the rents, issues and profits thereof are necessary to be received by the executor to pay the debts "of the estate." Note that the term used is broader than the "debts of decedent."

All such obligations of the estate are of course charges upon the corpus out of which the rent springs, and estate taxes, both state and federal, are liens thereon which it is the executor's duty to discharge by application of any funds legally available therefore.

The common law rule is abrogated by the statutes hereinbefore referred to, and the rents were properly applied to administrative purposes. The devisee had and has no right to object.

See also

In re Roessler's Estate,
160 Atl. 370 (N.J. Eq.),
Loscolzo vs. Eggner,
78 Atl. 607 (Del.), and
In re Bradfield's Estate,
221 Pac. 531 (Mont.)

It is respectfully submitted that the expenses necessary to collect the rents for payment of debts, taxes and necessary to perform the obligations assumed by testator as a landlord and which were prerequisite to rent collection, are "expenses" of administration and properly deductible.

Point 2. *Said deductions are also allowable as deductions for debts "owing by decedent at the time of his death" under Section 80-12-8, U.C.A. 1943.*

With the possible exception of the items for "management services" and insurance premiums (items 2 and 9 of Appellant's brief, p. 9), which are clearly deductible as administrative expense, all of the deductions are also proper as debts of the decedent.

It is not disputed that the testator in his lifetime rented all of the housing units in question to the tenants who occupied them after his death and during the period in question. Nor is it disputed that he, in his

leasing arrangements with them contracted and agreed to furnish the services involved, and that the premises and the agreements for service were subject to O.P.A. rent regulations.

It is elementary that the executrix and the devisee take possession and title to the testator's land subject to all of the outstanding estates, charges, and covenants made or created by the testator during his lifetime. They get no better title than the testator. The testator of course could not collect the rents unless he performed the covenants which were part of the consideration therefor. Neither could the executrix collect the rents in performance of her statutory duty without performing testator's obligations and covenants which he had contracted in his lifetime.

These obligations were clearly "owing" by the decedent at the time of his death" within the meaning of the controlling statute, even though they were continuously performable during the term of the leases of which they were a part. They were "owing at the time of his death" quite as much as testator's promissory note payable in monthly installments would be. They were "owing" even though not all "due" at the date of death. This construction is clearly within the letter as well as the purpose and intent of the statute.

Nor did the executrix have any power or right to cancel that portion of the obligation not yet due or performable. Under Rent Control Regulations the change of ownership was no excuse for termination of the tenancy and the obligation or covenant for services in effect

“ran with the land” even more effectively than an old common law covenant or easement could, for highly penal statutes and regulations, as well as the equitable remedy of injunction, were available to compel performance.

See, in this connection, the Emergency Price Control Act of 1942, as amended, especially Title 50 U.S. C.A. App., Section 925, as amended by Act of July 30, 1947, Ch. 361, Title I, Section 101, 61 Stat. 619, and the Controlled Housing and Rent Regulation Section 825.1 as amended July 1, 1948, Section 3, relating to minimum services. See also Housing and Rent Act of 1947, Section 209, as amended effective April 1, 1948 (Published with the Rent Regulation last referred to), relating to evictions.

See also Controlled Housing Rent Regulation Section 825.6 as amended April 5, 1949, relating to evictions.

It is clear that under the circumstances existing, the refusal of the executrix to honor the continuing obligations of the testator to the tenants would have resulted in actions for trebled damages with concomitant expense, which would certainly have depleted the estate. Hence it follows, as has been pointed out heretofore, that the expense of honoring those obligations to avoid such depletion is an expense of administration.

It is also clear that such obligations constitute debts of the estate which must be discharged. The fact that no claims were filed, or that they were not approved by the Court prior to payment is immaterial. No claims

are required on debts or obligations where performance is not due until after death.

It is generally the duty of the executor to perform decedent's executory contracts not terminated by death, such, for example, as a building contract.

2 Bancroft's Probate Practice
Section 528, pp. 967, et seq.

If there is no default in a land contract until after death, it is not necessary to present a claim.

Burdick vs. Kerkovecz, 254
Pac. 684 (Cal.)

And the right to exercise an option to purchase corporate stock owned by decedent is not barred by failure to present a claim.

Johnson vs. Johnson,
286 Pac. 109 (Colo.)

The obligation of a deceased lessee to place the demised premises in the same condition at the end of the term is not a "claim" against the estate, but it is a liability of the executor, where the breach did not occur until after death.

Nathan vs. Freeman, 225
Pac. 1015 (Mont.)

Moreover it is proper to allow credit to the personal representative for money expended in payment of liens, the discharge of which is necessary to the preservation of the estate. See

3 Bancroft's Probate Practice,
Section 964.

See also

3 Bancroft's Probate Practice,
Section 785.

It is obvious that the performance of all such obligations in effect depletes the value of the estate received by the heir or devisee, whether the same must be paid out of the corpus of the estate or out of the rents to accrue during administration. In the latter case the value of the corpus is definitely and adversely affected by and to the extent of the claims and obligations which are a charge thereon, and on the rents springing therefrom. It would seem therefore that on reason as well as under the law these obligations, which can in fact only be ascertained in the course of administration, are just as valid as deductions as are debts which must be filed as claims under the non-claim statute.

It is therefore respectfully submitted that the deductions in question, even if not properly allowed as expenses of administration, were properly allowed as debts due at the time of decedent's death.

Point 3. *It is immaterial whether the expenses questioned were paid out of rental income or out of the corpus of the estate.*

Under Question 2 of Appellant's brief, Appellant gives considerable consideration to the question of whether the expenses claimed should be taken out of rental income produced by reason of such expenditures. See Appellant's brief, pages 18 to 27 inclusive. As we view it, this is entirely immaterial. Under the statutes of Utah the rentals are subject to the payment of all

proper expenses of administration and debts of the estate, as has been shown. The tax statute allowing the deductions does not place any limitations on the allowance by reason of the source of the money used to pay the obligations allowed. Let us suppose, for the sake of argument, an estate in which there were no money to pay expenses of administration, including court costs and attorneys' fees, and the devisee of the real estate, in order to prevent the sale thereof for the purpose of paying these expenses contributed to the executor in cash the amount necessary to pay the same. The money so used would be even more obviously the private property of the devisee than it is in this case, and yet we apprehend it could not seriously be said that these court costs and attorneys' fees so paid would not be a proper deduction for inheritance tax purposes.

At the argument before the trial Court, the Appellant here argued strenuously that the allowance of these deductions, when there was rental income from which they might be paid, was contrary to the general scheme or philosophy of the Inheritance Tax Law of Utah. But tax laws rarely follow with legal nicety the close reasoning and logic which are characteristic of the development of the common law through judicial decision. Deductions and exemptions are frequently allowed by the legislature, either as a matter of policy or as a matter of grace, whether or not it is strictly logical so to do and whether or not it results in a tax lower than would be paid if rules of strict logic and reason were applied to the situation. If the deductions here claimed fall within the letter and general intent of the statute, in-

terpreted in the light of statutes existing when it was adopted, then the trial Court properly exercised his discretion to allow them.

It does not appear that the cases cited and relied upon by the Appellant here were decided under statutory provisions of the kind in effect here in Utah, and for that reason they are quite inapplicable.

Where, as here, rental as well as the corpus of the estate is liable for the payment of the obligations of the estate, it is quite immaterial whether the deductions claimed have or could have been paid out of rental rather than out of the corpus. The deductions are proper in either event.

CONCLUSION

Under the facts and the law as hereinbefore outlined, it is respectfully submitted that the trial Court properly interpreted the law and properly exercised the discretion vested in him by the law to allow the deductions as expenses of administration, that even if they were not properly expenses of administration they are properly deductible as debts of the decedent existing at his death, and that in any event the order of the trial Court is proper and should be affirmed.

Respectfully submitted,

PAUL THATCHER
OF THATCHER & YOUNG,
1018 First Security Bank Bldg.
Ogden, Utah
Attorneys for Respondent