# Clarke Quay Pte Ltd v Tan Hun Ling (trading as Sin Lok Cuisine) [2006] SGCA 22

**Case Number** : CA 135/2005

**Decision Date** : 29 June 2006

**Tribunal/Court** : Court of Appeal

**Coram** : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; Tan Lee Meng J

**Counsel Name(s)** : Pateloo Eruthiyanathan Ashokan (KhattarWong) for the appellant; Subramanian s/o Ayasamy Pillai (Acies Law Corporation) for the respondent

**Parties** : Clarke Quay Pte Ltd — Tan Hun Ling (trading as Sin Lok Cuisine)

*Landlord and Tenant – Covenants – Tenant having to pay damages for causing fire which spread due to ill-maintained exhaust duct commencing from and serving tenant's demised premises only in landlord's building – Landlord under contractual duty to clean and maintain "all common areas" – Whether landlord breaching such contractual duty by failing to clean and maintain duct – Whether duct part of "common area" in building – Whether landlord having to indemnify tenant for damages payable by tenant*

29 June 2006 *Judgment reserved.*

**Andrew Phang Boon Leong JA (delivering the judgment of the court):**

**Introduction**

1 The facts giving rise to the present proceedings were rather unusual. The respondent was the tenant of a unit (#01-03) ("the demised premises") in Block 3D, Clarke Quay ("the building") which was owned by the appellant landlord, with the kitchen being located on the second floor of the demised premises. The respondent operated a seafood restaurant on the demised premises. On 13 November 2002, a fire started in the respondent's kitchen on the second floor of the building. The learned trial judge ("the judge") held that the fire was the result of negligence on the part of the respondent's servant who had left a wok of oil to heat unattended (see *Saatchi & Saatchi Pte Ltd v Tan Hun Ling* [2006] 1 SLR 670 ("GD")). The oil overheated, causing the fire to break out. She further held that the respondent was vicariously liable for his servant's negligence. Although the respondent's servant had (apparently) extinguished the fire in the kitchen by the time the Singapore Civil Defence Force arrived, the heat from the fire had, unbeknownst to him, ignited oil and grease residue deposited in the lower part of the exhaust duct ("the duct"), which was (in turn) connected to a cooker hood in the kitchen. The ignition of the oil and grease residue in the lower part of the duct caused a sustained fire to develop, hidden from view, within the duct. In fact, the Singapore Civil Defence Force was itself satisfied that the fire in the respondent's kitchen had been extinguished and it was not until someone had alerted them to a fire on the third floor that it was appreciated that the fire had spread through the duct. The duct itself passed upwards through the third storey, opening up through a chimney in the roof. The fire in the duct spread upwards through the duct. It reached the chimney and burnt the wooden louvres at the top of the chimney itself. The hot debris from the wooden louvres fell through the skylight and into the first plaintiff's premises on the third storey of the building, causing damage to the plaintiff's property. The entire situation was unfortunate, unusual and unexpected, to say the least.

2 The plaintiff's insurers brought a subrogated claim against the respondent (these insurers

were, therefore, the actual plaintiff in the present proceedings but, for ease of reference, we will refer hereafter to the first plaintiff only as "the plaintiff"). By way of third-party proceedings initiated by the respondent, the appellant was brought into the proceedings in order to indemnify the respondent in the event that the respondent was held liable to the plaintiff.

3 As already noted, the judge held that the respondent was vicariously liable for the negligence of his servant and was therefore liable for the damage caused to the plaintiff's property. There has been no appeal against this particular holding.

4 The judge also held that the appellant was guilty of contributory negligence and therefore ordered the appellant to indemnify the respondent for 50% of the plaintiff's damages, as well as to pay the respondent's entire costs of defending both the plaintiff's action and the third-party proceedings. The appellant was dissatisfied with this decision and filed an appeal which is the subject of the present proceedings. In other words, this appeal was primarily concerned with whether or not the judge in the court below was justified in ordering the appellant to indemnify the respondent for damage caused to another party (*viz*, the plaintiff). We should pause here to note that there was perhaps some confusion with respect to the applicable legal concepts. In relation to the present proceedings, what we are concerned with is the issue of *indemnity*. This, in turn, depends on the actual *contractual* relationship between the appellant and the respondent.

**Issues raised by the appellant**

5 In the present proceedings, the appellant raised four issues, as follows.

6 The first was whether *the appellant* was responsible for cleaning and maintaining the duct. If, of course, it had no such legal responsibility, then it would succeed in the present appeal simply because all the legal responsibility for the plaintiff's damage would lie solely at the respondent's doorstep. There would, in the circumstances, be no duty whatsoever to indemnify the respondent.

7 The second issue raised was this: Whether the spread of the fire was caused by the respondent as a result of his breaching para 1(14)(c) of the letter of offer ("Offer Letter") and/or cl 2(31) of the tenancy agreement between the appellant and the respondent ("the Tenancy Agreement"). More specifically, if these (contractual) provisions imposed the legal responsibility of cleaning and maintaining the duct on *the respondent*, then he would not only be in breach of these provisions but would also *not* (as a consequence) be entitled to an *indemnity* from the appellant. It should be emphasised once again, however, that in order for the appellant to succeed on this particular issue, it must be proved not only that the respondent had been in breach of these provisions but also that such breach had *caused* the damage to the plaintiff's property.

8 We note, in fact, that (assuming that the necessary causative links to the damage to the plaintiff's property existed) the first and second issues were (in a sense) two sides of the same coin, dealing as they did with the respective party's alleged duties to clean and maintain the duct. In point of fact and logic, it was of course only one party's legal responsibility in this particular regard (see also [18] below).

9 The third issue was whether, assuming that the appellant was responsible for cleaning the duct, whether its failure to clean the duct caused the damage suffered by the plaintiffs.

10 The fourth issue was whether, in any event, the exclusion as well as indemnity clauses in the Tenancy Agreement absolved the appellant from liability.

**Analysis of the first and second issues**

11 In our view, the crucial issue in these proceedings centres on the *first and second* issues. In other words, whose duty was it to clean and maintain the duct? To reiterate, if it was the appellant's, then the appeal must necessarily fail as it would not be entitled to claim an indemnity from the respondent. If, on the other hand, it was the respondent's duty to clean and maintain the duct, then the appellant must necessarily succeed in this appeal. This assumes, of course, that the breach of this duty also caused the damage to the plaintiff's property.

12 In order to ascertain the answer to the issue posed in the preceding paragraph, one has to construe the relevant terms of the contract between the appellant and the respondent in the context of the surrounding circumstances and material facts as a whole.

13 Before proceeding to do so, we should note that there is some authority which suggests (contrary to conventional approaches to issues such as these) that legal responsibility might be *shared* between the parties concerned where *both* parties are found to have *caused* the loss or damage in question. This raises an interesting legal issue which, to the best of our knowledge, is still an open question – at least in the Singapore context. Whilst we will comment briefly on the relevant decisions in due course (at [37]–[38] below), we are of the view that this is not an issue that arises for decision or clarification on the facts of this case. This is because, as we shall see, we find that *only one* of the parties was *solely* responsible for the damage which occurred in the present case. It is therefore imperative to consider the specific facts as well as contractual terms that bear on the issue of causation in the present context.

14 We turn, first, to the obligations of the *appellant* in its capacity as *landlord*. As counsel for the appellant, Mr P E Ashokan, pointed out, these were embodied in cll 3(4) and 3(5) of the Tenancy Agreement, which read as follows:

> (4): To keep the roof, main drains and pipes, all external walls and all common areas of the Building including the entrances, corridors, passages, stairways, landings, car-park, lifts, escalators and common toilets clean and in good repair including repainting and redecorating of the same or any part thereof at such times and in such manner as the Landlord in its absolute discretion may consider necessary. Provided Always that the Landlord shall not be liable for any loss or injury sustained by the Tenant through the neglect, default, negligence or misconduct of the Landlord's cleaning contractors, agents, servants and/or licensees.
>
> (5): To keep the lifts, escalators, staircases, landings and such common areas as aforesaid, well and sufficiently cleaned and lighted and to keep the lifts and escalators in proper working order and to employ a watchman or watchmen for the protection at night of the Demised Premises (but not so as to render the Landlord liable for any loss sustained by the Tenant through the neglect, default, negligence or misconduct of such watchman or watchmen).

15 It is clear from the above clauses that the appellant is responsible for the maintenance of what are, in essence, the *common areas* of the building in the manner stated therein. The question that arises in the context of the present proceedings is whether the duct falls within the ambit of the aforementioned clauses. It is clear that it does *not.* We note here that because the fire in question originated at the bottom of the duct, it is the status of *this particular portion* of the duct that is crucial. As just mentioned, it is clear that this portion of the duct was *not* part of the common area within the meaning of these clauses.

16 A sketch is in fact appended below for easy reference.

***[LawNet Admin Note: Click on the link to the PDF above to see the image(s)]***

17 The duct, as we have seen, extends – in a physical sense – beyond the demised premises. It does, however, commence *within* the demised premises. This is the shaded area in the sketch above. The duct is attached to the cooker hood whose function is supposed to draw up by suction, fumes and other undesirable odours upwards and outwards through the chimney. Further, the duct is intended to (and in fact did) serve *the demised premises – and those premises alone.* While the exclusive use of an area is *not always* conclusive in determining whether that particular area falls within or outside the demised premises, we are satisfied that, in the present context, the exclusive use of the duct by the respondent constituted an extremely persuasive (if not conclusive) factor. This is because it stands to reason that it is illogical for the appellant landlord to be held as retaining control over, as well as being responsible for, something which he had no use for. It is illogical, therefore, in our view, to argue that that portion of the duct housed within the demised premises (and in which the cause of the fire was located) was part of the common area.

18 On the contrary, we find that this particular portion of the duct constituted *part of the demised premises* instead.

19 To elaborate further, whether a particular fixture lies within or outside the demised premises usually falls to be determined by the contract entered into by the tenant and the landlord. Thus, it was necessary to examine how the parties described the ambit of the demised premises. Paragraph one of the Tenancy Agreement, read with the First Schedule, defined the demised premises as:

> ALL THAT premises estimated to contain an area of 298 square metres (3,208 square feet) being Unit No #01-03 on the 1st Storey of the Building known as Block 3D, forming part of the premises known as Clarke Quay Singapore …

The Offer Letter defined the demised premises in similar terms.

20 Unfortunately, this description did not help very much in the analysis because, as the sketch above demonstrated, while the duct started from the respondent's kitchen, it also extended all the way to the roof. As such, relevant general principles had to be considered and applied.

21 Indeed, *Graystone Property Investments Ltd v Margulies* (1983) 269 EG 538 supports the position that a demised premise usually incorporates all the space between the floor of his premises and the underside of the floor of the premises above, including the void spaces above or below any false ceiling or floor. Therefore, in this case, there was direct case law to support the finding that, at the very least, the part of the duct falling within the false ceiling had been demised to the respondent.

22 Counsel for the respondent, Mr S A Pillai, nevertheless argued repeatedly before this court that the appellant had never mentioned to the respondent that it was his (the respondent's) duty to clean and maintain the duct. However, this argument without more is of no avail to the respondent. In other words, the *purely subjective* perception of the respondent is insufficient, in and of itself. What *is* crucial is an *objective* analysis of the *contractual obligations* between the appellant and the respondent. After all, the present proceedings concerned the issue of whether or not the appellant was under a legal obligation *under the contract* to *indemnify* the respondent.

23 If, in fact, the respondent was under a *contractual* duty to clean and maintain the duct,

then that contractual duty would, *ex hypothesi*, be a *strict* one. The respondent could not excuse himself by stating that he was subjectively ignorant of this particular duty. Nor, as he argued, could he excuse himself from that legal obligation on the basis that the appellant's maintenance team would attend occasionally to faults in relation to the duct. In the absence of a legal obligation on the part of the appellant, what we are left with is essentially simply a gratuitous gesture of good faith on the part of the appellant. In any event, we note that the respondent leased the demised premises precisely because it was "restaurant ready" and had in place an exhaust duct.[note: 1] Thus, contrary to what counsel for the respondent has vigorously claimed in the course of the present appeal, the respondent must have known that an exhaust duct ran from the restaurant kitchen itself to the exterior of the building. Indeed, we also note that when inspecting the demised premises, the respondent was told by the leasing manager that there was no access to any part of the ducting from the premises.[note: 2] This statement clearly implied that there was an exhaust duct somewhere in the premises.[note: 3] Third, when asked whether part of the ducting was within the demised premises, the respondent's answer was that to his understanding, the ducting "ran up a concrete wall and disappeared somewhere."[note: 4] This appeared to us to be an admission that the respondent knew where the duct was. Finally, while the duct was concealed by a false ceiling, any reasonable person would have known that, by definition, a false ceiling in a kitchen must have been concealing something for cosmetic purposes, which, in this case, was the exhaust duct. Looking at these facts, the only reasonable inference that could have been drawn was that the respondent knew that there was an exhaust duct and he knew, at least in general terms, that the exhaust duct must have run from above the cooker hood, which was still within the kitchen, all the way to the roof or the exterior of the building. For a restaurateur who specifically required an exhaust duct and inspected the premises before signing the Tenancy Agreement to claim ignorance of the location of the exhaust duct is beyond belief. The only way the respondent could have avoided knowledge of the whereabouts of the exhaust duct was if he had shut his eyes to the obvious.

24 In any event, as we have already emphasised, if the respondent was under a strict contractual duty to clean and maintain the duct, his claims of ignorance (which we have in fact *rejected*) would not be of any avail to him. Given that the exhaust duct falls within the demised premises, what, then, do the actual terms of the contract tell us?

25 We turn, first, to cl 1(14)(c) of the Offer Letter, which reads as follows:

> You shall be responsible for cleaning and maintaining to a hygienic standard acceptable to the Landlord all air-ducting equipment and pipes, the cookerhoods or any other air-cleaning device in the Demised Premises.

26 In the judge's view, this clause was not wide enough to include the duct. Her starting point was as follows (GD at [31]):

> The third party [the appellant] has in its [Offer Letter] used a comma after the word "pipes" and "air-ducting equipment and pipes" should be read together. What follows next are "cooker hoods" *or* (not *and*) "any other air-cleaning device". The use of the preposition "or" instead of "and" and "any other air-cleaning device" means other types of "cleaning devices" namely air-cleaners. [emphasis in original]

27 The judge then held that, as a matter of common usage, the term "air-ducting" was referable to air-ducting for the inflow of fresh air into an environment where ventilation was inadequate or poor. As such, the term did not include the exhaust duct. As for the term "air cleaning devices", she held that they referred to air filters and air cleaners designed to remove or reduce indoor air pollutants (see GD at [34]). However, the judge took judicial notice of three types of air cleaners on

the market – mechanical filters, electronic air cleaners and ion generators – and concluded that the exhaust duct was not such a device. Accordingly, the judge thought that the only relevant term was "cookerhoods" but that this was directed only at the exterior hood and not the rest of the exhaust system. This conclusion, she held, was reinforced by the respondent's testimony that he was not shown the whereabouts of the motor fan and ducts (see GD at [35]).

28 With great respect, we differ from the judge's interpretation of this clause. The clause was in fact phrased in broad terms. What is crucial is the language, spirit and concomitant purpose of the clause itself. Its intention was, in our view, to impose upon the respondent the responsibility of cleaning and maintaining all ventilating ducts for the purpose of ensuring hygiene and/or reducing the risk of an outbreak of fire so long as these were within the demised premises. This much could be gathered from the juxtaposition of this clause with the other clause dealing with health and fire requirements applicable to restaurants. In our view, it could not be reasonably argued that an exhaust duct (such as that involved in the present case) need not be maintained either to ensure hygiene or to minimise the risk of an outbreak of fire.

29 Turning to the specific language utilised in the clause itself, it is our view that the use of the term "air-ducting" was not, as the judge found, confined only to the inflow of fresh air. Bearing in mind, once again, the underlying rationale of the clause, it would appear that the said term was referring to either the inflow or the outflow of air to or from the demised premises and it was therefore unnecessary to restrict the meaning of the term, thereby excluding the duct from its purview. Further, if "air cleaning devices" were, as the trial judge observed, "designed to remove or reduce indoor air pollutants", it was difficult to appreciate why the exhaust duct, which was designed for the purpose of "sucking out vapour fumes"[note: 5] did not fall within this definition.

30 We turn now to the relevant clause in the Tenancy Agreement, which is cl 2(31). Under that clause, the respondent was under the obligation:

> To keep the Demised Premises and *all fixtures, installations and appliances* therein in a safe condition by adopting all necessary measures to prevent any outbreak or occurrence of fire in the Demised Premises and upon written notice from the Landlord, to comply with such requirements as the Landlord may in its discretion stipulate as to fire precautions relating to the Demised Premises. [emphasis added]

31 According to the judge, the appellant's contention that this general clause was wide enough to include the duct was untenable because the principal terms of the Offer Letter overrode the standard and general clauses in the lease. Thus, since the special terms of the Offer Letter did not impose the obligation to clean and maintain the exhaust duct on the respondent, the general clauses in the Tenancy Agreement were not capable of achieving a different result. However, as we have found that the special terms of the Offer Letter (in particular, cl 1(14)(c) thereof) did impose the obligation to clean and maintain the duct, there is nothing precluding us from considering cl 2(31) of the Tenancy Agreement. Indeed, as we shall see, our construction of this last-mentioned clause is consistent with – and buttresses – our construction of cl 1(14)(c) of the Offer Letter.

32 Turning to cl 2(31) of the Tenancy Agreement, we note that, under the clause, the respondent was to keep "all fixtures, fittings, installations and appliances" within the demised premises in a safe condition in order to prevent the outbreak of fire. We accept the interpretation put forward by counsel for the appellant that the duct is a fixture. It has been held by this court that "[w]hether a chattel has become so affixed to land as to become part of it turns on the particular circumstances of each case, mainly, though not decisively, on the degree of annexation and the object of annexation": see *Gebrueder Buehler AG v Chi Man Kwong Peter* [1988] SLR 24 at 29, [19],

citing *Holland v Hodgson* (1872) LR 7 CP 328 at 334. These conditions were fulfilled in this case. First, the duct ran through the building and between two reinforced concrete walls such that it could not be dismantled or removed without causing damage to the premises. Second, that the duct was a permanent and substantial improvement to the premises was reinforced by the respondent's own admission that he leased the premises because it came with an exhaust duct – a point already noted above.

33 It was therefore clearly the legal responsibility of the respondent to ensure that the duct was cleaned and maintained.

34 It is our view that the respondent was therefore *solely* responsible for the fire in the duct which ultimately caused the damage to the plaintiff's property. Indeed, the cause of the fire originated in the bottom part of the duct which was clearly within the demised premises.

35 Without the smouldering and subsequent combustion of oil and grease residue that had accumulated at the bottom portion of the duct, the fire would not have travelled upwards and burnt the wooden louvres which fell into the plaintiff's premises and caused damage to its property. If the respondent had fulfilled his contractual duty to clean and maintain the bottom part of the duct (*ie*, the shaded area as shown in the illustration in [16]), there would have been no critical mass of material within that bottom part of the duct which ignited and ultimately spread to the plaintiff's premises and damaged its property. It was argued that the respondent did clean the duct but the evidence clearly showed that only a portion of the front part of the duct was cleaned, but not the entire horizontal length of the duct shown in the illustration in [16]. In our view, the respondent clearly failed to clean the duct situated within the demised premises and it was the failure to clean and maintain this part of the duct that was responsible for the damage to the plaintiff's premises.

36 For the avoidance of doubt, we are also of the view that even that part of the duct that lay outside the physical boundaries of the demised premises nevertheless constituted part of the demised premises and ought also to have been cleaned and maintained as well. This is a significant point because there could have been some oil and grease residue in that part of the duct as well. Although no arguments were presented to us specifically with respect to this particular issue, because of the possible implications from the perspective of causation, we wish to clarify that the cleaning and maintenance of *that* part of the duct was *also* the respondent's legal responsibility. This is because it was clear that the duct was an entire piece and was (as we have already pointed out) intended to serve the demised premises – and the demised premises alone (see [17] above). More importantly, we have found that the duct was a *fixture* (see [32] above). In the circumstances, therefore, the *entire* duct formed *part of the demised premises*.

37 Given this finding, we need not pursue the possible argument (referred to briefly above at [13]) to the effect that, even on a *contractual* basis, it might be possible to allocate liability if *both* parties (here, the appellant and the respondent) had *caused* the damage to the plaintiff. This approach was adopted by the English Court of Appeal in *Tennant Radiant Heat Ltd v Warrington Development Corporation* [1988] 1 EGLR 41 ("*Tennant Radiant Heat Ltd*"), and endorsed in the English High Court decision of *W Lamb Ltd v J Jarvis & Sons plc* (1998) 60 Con LR 1 ("*W Lamb Ltd*") – even though in the English Court of Appeal in *Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd* [1990] 1 QB 818, the view was expressed (albeit *obiter*, at 904) that:

> [T]he facts and circumstances of the present case are such that it can and should be easily distinguished from those in *Tennant Radiant Heat Ltd. v. Warrington Development Corporation* [1988] 1 E.G.L.R. 41, decided in this court on 16 December 1987. *We merely add respectfully our view that the scope and extent of this last mentioned case would have to be a matter of*

*substantial argument if the principle there applied were to arise for consideration in another case*. [emphasis added]

38 Although Judge John Hicks QC in *W Lamb Ltd* ([37] *supra*) was nevertheless of the view that, the above quoted remarks notwithstanding, the approach in *Tennant Radiant Heat Ltd* ([37] *supra*) was to be preferred (see at 24–25), with respect, however, it seems to us that the approach adopted in *Tennant Radiant Heat Ltd* is too broad and is, in *substance* at least, an application, to strict contractual obligations, of the *principles* embodied in the UK equivalent of our Contributory Negligence and Personal Injuries Act (Cap 54, 2002 Rev Ed), but by way of *common law* fiat instead.

39 Nor need we consider the *alternative* argument to the effect that the contractual duty owed by the respondent to the appellant was concurrent with a corresponding tortious duty and that, therefore, the defence of contributory negligence was available to the respondent pursuant to the principles accepted by this court in *Fong Maun Yee v Yoong Weng Ho Robert* [1997] 2 SLR 297, where the leading English decision in *Forsikringsaktieselskapet Vesta v Butcher* [1989] AC 852 was adopted and followed (the House of Lords did not, however, deal specifically with this particular point although the Court of Appeal and High Court did, with the Court of Appeal decision also being reported in the citation just given). Indeed, these principles were also applied (again, by this court) in the very recent decision of *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] SGCA 20 (where the defence of contributory negligence in contract was also explored in more detail). We note, in fact, that neither counsel in the present proceedings addressed us on this particular issue. As it turns out, we do not, as we have just mentioned, need to consider it in the light of our findings on the facts (in particular, that the respondent was *solely* responsible for the cleaning and maintenance of the entire duct, and that there could therefore be no possibility of contributory negligence on the part of the appellant).

40 In differing from the judge's interpretation of the relevant provisions in the Offer Letter and the Tenancy Agreement, we are, of course, mindful that an appellate court would not usually sit in judgment of the trial judge's findings of fact unless they are against the weight of the objective evidence. The rationale for this is that the trial judge has the unique advantage of observing the witnesses. Hence, an appellate court's deference to a trial judge's findings of fact is at its apogee whenever they are based on the credibility of witnesses. However, the interpretation of contractual provisions (such as those involved in the present proceedings) does not depend on the assessment of witnesses but rather on the inferences to be drawn from the undisputed contract between the parties. As such, this court was in as good a position to interpret the Offer Letter and the Tenancy Agreement as the trial judge: see *MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1995] 1 SLR 36 at 44, [23].

**Third and fourth issues**

41 In the light of our holding with respect to the first and second issues raised by the appellant, it is unnecessary for us to consider the parties' arguments with respect to the third and fourth issues.

**Conclusion**

42 In summary, we find that it was *the respondent's* legal responsibility – *and his responsibility alone* – to clean and maintain the duct. He did not and in fact his servant's negligence (for which he was vicariously liable) caused loss to the plaintiff. The respondent was therefore *solely* liable for the plaintiff's loss. What *was* clear was that the appellant bore no legal responsibility for the cleaning and maintenance of the duct. In the premises, we allow the appeal with costs.

[note: 1] See Notes of Evidence ("NE") at p 187.

[note: 2] See NE at p 188.

[note: 3] This statement was potentially misleading because there was a point of access to the exhaust duct from the cooker hood. In fact, the respondent's chef was able to clean the rim of the opening of the exhaust duct just above the cooker hood from the kitchen: see NE at pp 156-157.

[note: 4] See NE at p 197.

[note: 5] See NE at p 127.