

EUGENIO LOPEZ, PUBLISHER AND OWNER OF THE "MANILA CHRONICLE"; AND JUAN T. GATBONTON, PETITIONERS, VS. THE HON. COURT OF APPEALS AND FIDEL G. CRUZ, RESPONDENTS.*G.R. No. L-26549. July 31, 1970*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4ab9ecf18122/>**FERNANDO, J.:**

There is an element of novelty in this appeal by certiorari from a decision of respondent Court of Appeals holding petitioners, the then publisher and editor of This Week Magazine, liable in damages to the tune of eleven thousand pesos arising from the publication of a picture of respondent, Fidel G. Cruz, as being responsible for the hoax of the year. The absence of any connection either fanciful or remote with such event is admitted. The view is pressed by petitioners, invoking a liberal construction of the implications of press freedom, owning up to the mistake, unfortunately not discovered until it was too late, and publishing a correction as an earnest of its good faith, that they should not be made to pay at all. This Court, without discounting the elements of plausibility of their contention, cannot, however, close its eyes to the injury inflicted on respondent and indulge them in such a plea. It is not disposed though to affirm respondent Court's decision in its entirety. Considering all the circumstances, the damages awarded to private respondent appear to be far too generous. A reduction is in order. The sum of one thousand pesos would be enough. So we decide.

The antecedents of the case follow: In the early part of January, 1956, there appeared on the front page of The Manila Chronicle, of which petitioner Eugenio Lopez was the publisher, as well as on other dailies, a news story of a sanitary inspector assigned to the Babuyan Islands, Fidel Cruz by name, sending a distress signal to a passing United States Airforce plane which in turn relayed the message to Manila. He was not ignored, an American Army plane dropping on the beach of an island an emergency-sustenance kit containing, among other things, a two-way radio set. He utilized it to inform authorities in Manila that the people in the place were living in terror, due to a series of killings committed since Christmas of 1955. Losing no time, the Philippines defense establishment rushed to the island a platoon of scout rangers led by Major Wilfredo Encarnacion. Upon arriving at the reported killer-menaced Babuyan Claro, however, Major Encarnacion and his men found, instead of the alleged killers, a man, the same Fidel Cruz, who merely wanted transportation home to Manila. In view of this finding, Major Wilfredo Encarnacion branded as a "hoax", to use his own descriptive word, the report of Fidel Cruz. That was the term employed by the other newspapers when referring to the above-mentioned incident.

This Week Magazine of the Manila Chronicle, then edited by petitioner Juan T. Gatbonton, devoted a pictorial article to it in its issue of January 15, 1956. Mention was made that while Fidel Cruz' story turned out to be false, it brought to light the misery of the people living in that place, with almost everybody sick, only two individuals able to read and write, food and clothing being scarce. Then in the January 29, 1956 issue of This Week Magazine, the "January News Quiz" included an item on the central figure in what was known as the Calayan Hoax, who nevertheless did the country a good turn by calling the government's attention to that forsaken and desolate corner of the Republic. Earlier in its Special Year End Quiz appearing in its issue of January 13, 1956,

reference was made to a health inspector who suddenly felt "lonely" in his isolated post, cooked up a story about a murderer running loose on the island of Calayan so that he could be ferried back to civilization. He was given the appellation of "Hoax of the Year".

The magazine on both occasions carried photographs of the person purporting to be Fidel Cruz. Unfortunately, the pictures that were published on both occasions were that of private respondent Fidel G. Cruz, a businessman-contractor from Santa Maria, Bulacan. It turned out that the photographs of respondent Cruz and that of Fidel Cruz, sanitary inspector, were on file in the library of the Manila Chronicle in accordance with the standard procedure observed in other newspaper offices, but when the news quiz format was prepared, the two photographs were inadvertently switched.

As soon, however, as the inadvertent error was brought to the attention of petitioners, the following correction was immediately published in This Week Magazine on January 27, 1957: "While we were rushing to meet the deadline for January 13th issue of This Week, we inadvertently published the picture of former Mayor Fidel G. Cruz of Sta. Maria, Bulacan businessman and contractor, in 'Our Own Who's Who feature in the Year End Quiz' of This Week in lieu of the health inspector Fidel Cruz, who was connected with a story about a murderer running loose on Calayan Island. We here express our profound regrets that such an error occurred." Together with the foregoing correction, petitioners published the picture of Fidel Cruz; the photographs and the correction moreover were enclosed by four lines, the type used was bolder than ordinary, and the item was placed in a conspicuous place in order to call the attention of the readers to such amends being made.[1]

Respondent Fidel G. Cruz sued petitioners in the Court of First Instance of Manila for the recovery of damages alleging the defamatory character of the above publication of his picture. After trial duly had, he was awarded five thousand pesos as actual damages, another five thousand pesos as moral damages, and one thousand pesos for attorney's fees. That judgment was affirmed on appeal to respondent Court. Hence, this petition for certiorari with the result, as already announced at the opening of this opinion, that while respondent Cruz is entitled to prevail, the damages awarded him should be reduced.

1. It is on the freedom of the press that petitioners would stake their case to demonstrate that no action for libel would lie arising from the publication of the picture of respondent Cruz identified as responsible for the hoax of the year, when such was not the case at all. It is easily understandable why. No liability would be incurred if it could be demonstrated that it comes within the well-nigh all-embracing scope of freedom of the press. Included therein is the widest latitude of choice as to what items should see the light of day so long as they are relevant to a matter of public interest, the insistence on the requirement as to its truth yielding at times to unavoidable inaccuracies attendant on newspapers and other publications being subject to the tyranny of deadlines. If no such showing could be plausibly made, however, it is difficult to resist the conclusion that there was in fact the commission of such quasi-delict. It was held in *Lu Chu Sing v. Lu Tiong Gui*,[2] that "the repeal of the old Libel Law (Act No. 277) did not abolish the civil action for libel." [3] A libel was defined in that Act as a "malicious defamation, expressed either in writing, printing, or by signs or pictures, or the like, * * *, tending to blacken the memory of one who is dead or to impeach the honesty, virtue, or reputation, or publish the alleged or natural defects of one who is alive, and thereby expose him to public hatred, contempt, or ridicule." [4] There was an express provision in such legislation for a tort or a quasi-delict action arising from libel. [5] There is reinforcement to such a view in the new Civil Code providing for the recovery of moral damages for libel, slander or any other form of defamation. [6]

There has been no time then in our judicial history when civil actions for libel did not form a staple part of litigations which had reached this Court. [7] Such is the case in a far greater measure in the United States. According to the standard treatise of Newell on Slander and Libel: "Publication of a person's photograph in connection with an article libelous of a third person, is a libel on the person whose picture is published, where the

acts set out in the article are imputed to such person." [8] In support of the above statement, he made reference to several cases. [9] Other decisions to the same effect have been promulgated since the fourth edition of Newell published in 1924. [10] Why libel law has both a criminal and a civil aspect is explained by Hale in his Law of the Press thus: "On the one hand, libeling a person results in depriving him of his good reputation. Since reputation is a thing of value, truly rather to be chosen than great riches, an impairment of it is a personal wrong. To redress this personal wrong money damages are awarded to the injured person. On the other hand, the publication of defamatory statements tends strongly to induce breach of the peace by the person defamed, and hence is of peculiar moment to the state as the guardian of the public peace. Viewed from this angle, libel is a crime, and as such subjects the offender to a fine or imprisonment." [11]

The first decision cited by Newell is a decision of Justice Holmes. The case is *Peck v. Tribune Co.* [12] Plaintiff there complained of her picture being published in an advertisement in defendant's newspaper. The Chicago Sunday Tribune, with certain words of commendation for a brand of liquor attributed to her when in fact she did not make such a statement at all and could not have made it, as she was a total abstainer. The defendant was held liable, for as Justice Holmes pointed out: "There was some suggestion that the defendant published the portrait by mistake, and without knowledge that it was the plaintiff's portrait, or was not what it purported to be. But the fact, if it was one, was no excuse. If the publication was libelous, the defendant took the risk. As was said of such matters by Lord Mansfield, 'Whenever a man publishes, he publishes at his peril.' * * * The reason is plain. A libel is harmful on its face. If a man sees fit to publish manifestly hurtful statements concerning an individual, without other justification than exists for an advertisement or a piece of news, the usual principles of tort will make him liable if the statements are false, or are true only of someone else." [13]

Learned Hand, in holding that an action for libel would lie arising from a publication in an advertisement of plaintiff's photograph yielding a "grotesque, monstrous and obscene impression" and that he was "substantially enough ridiculed" to complain reached the conclusion "that because the picture taken with the legends was calculated to expose the plaintiff to more than trivial ridicule, it was prima facie actionable; that the fact that it did not assume to state a fact or an opinion is irrelevant; and that in consequence the publication is actionable." [14] It is likewise an accepted fact that such publications do occasion greater injury to reputation than would mere words alone. Cardozo so aptly put the matter thus: "It has its genesis in evils which the years have not erased. Many things that are defamatory may be said with impunity through the medium of speech. Not so, however, when speech is caught upon the wing and transmuted into print. What gives the sting to the writing is its permanence of form. The spoken word dissolves, but the written one abides and 'perpetuates the scandal.' * * * When one speaks of a writing in this connection, one does not limit oneself to writings in manuscripts or books. Any symbol suffices - pictures, hieroglyphics, shorthand notes - if only what is written is intelligible to him who reads." [15]

2. That is only one side of the picture, however. There is an impressive recognition in our decisions of the curtailment to which press freedom would be subjected if an action for libel were not rigorously scrutinized to remove doubts as to its being utilized to penalize the exercise of that constitutional right. Thus, in the first leading case, *United States v. Bustos*, [16] Justice Malcolm could correctly stress: "The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation: the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as an individual is less than the State, so must expected criticism be born for the common good." [17] On this aspect of the question, which, as answered by him, would require that a criminal suit for libel should not be utilized as a means for stifling press freedom, he categorically declared: "Public policy, the welfare of society, and the orderly administration of

government have demanded protection for public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege."[18]

In another civil action for libel, such a thought is expressed differently in this wise: "So long as it is done in good faith, newspapers have the legal right to have and express opinions on legal questions. To deny them that right would infringe upon the freedom of the press."[19] The last word on the subject, up to now at least, came from *Quisumbing v. Lopez*. [20] In the language of the then Chief Justice Paras, who penned the opinion: "The Court of Appeals found as a fact that 'there is no evidence in the record to prove that the publication of the news item under consideration was prompted by personal ill will or spite, or that there was intention to do harm, 'and that on the other hand there was 'an honest and high sense of duty to serve the best interests of the public, without self-seeking motive and with malice towards none.' Every citizen of course has the right to enjoy a good name and reputation, but we do not consider that the respondents, under the circumstances of this case, had violated said right or abused the freedom of the press. The newspapers should be given such leeway and tolerance as to enable them to courageously and effectively perform their important role in our democracy. In the preparation of stories, press reporters and editors usually have to race with their deadlines; and consistently with good faith and reasonable care, they should not be held to account, to a point of suppression, for honest mistakes or imperfection in the choice of words." [21]

It was not until 1964 that the United States Supreme Court had occasion to speak its mind on the subject. In the leading case of *New York Times Co. v. Sullivan*, [22] the nature of the question presented was set forth by Justice Brennan for the Court in the opening paragraph of his opinion: "We are required in this case to determine for the first time the extent to which the constitutional protections for speech and press limit a State's power to award damages in a libel action brought by a public official against critics of his official conduct." [23] This is the Court's approach to such an issue: "In deciding the question now, we are compelled by neither precedent nor policy to give any more weight to the epithet 'libel' than we have to other 'mere labels' of state law. * * * Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment." [24] Continuing the same trend, the opinion stressed further: "Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. * * * The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection." [25]

For liability to arise then without offending press freedom, there is this test to meet: "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not." [26] The United States Supreme Court went further in *Curtis Publishing Co. v. Butts*, [27] where such immunity was held as covering statements concerning public figures regardless of whether or not they are government officials. Why there should be such an extension is understandable in the light of the broad scope enjoyed by press freedom which certainly allows a full and free discussion of public issues. What can be more logical and appropriate, then, than such an expansion of the principle. As noted by a commentator: "Since discussion of public issues cannot be meaningful without reference to the men involved on both sides of such issues, and since such men will not necessarily be public officials, one cannot but agree that the Court was right in *Curtis* to extend the *Times* rule to all public figures." [28]

The significance of the foregoing line of decisions impressive for their consistency is quite obvious. No inroads on press freedom should be allowed in the guise of punitive action visited on what otherwise could be characterized as libel whether in the form of printed words or a defamatory imputation resulting from the publication of respondent's picture with the offensive caption as in the case here complained of. This is not to deny that the party responsible invites the institution either of a criminal prosecution or a civil suit. It must be admitted that what was done did invite such a dire consequence, considering the value the law justly places on a man's reputation. This is merely to underscore the primacy that freedom of the press enjoys. It ranks rather high in the hierarchy of legal values. If the cases mean anything at all then, to emphasize what has so clearly emerged, they call for the utmost care on the part of the judiciary to assure that in safeguarding the interest of the party allegedly offended, a realistic account of the obligation of a news media to disseminate information of a public character and to comment thereon as well as the conditions attendant on the business of publishing cannot be ignored. To single out one decision, *Quisumbing v. Lopez* so speaks in tones loud and clear.

3. It is to the haven thus afforded by such a highly sympathetic ruling to press freedom that petitioners would seek refuge. The defamatory matter complained of in the *Quisumbing* case appeared in the headline. It was without basis, as shown by the text of the news item itself. Nonetheless, for the reasons expressed with vigor and clarity by former Chief Justice Paras, no liability was deemed incurred by the then publisher of the *Manila Chronicle*. A newspaper, it is stressed, "should not be held to account to a point of suppression for honest mistakes or imperfection in the choice of words." The above ruling, coupled with the requirement in the *New York Times* decision of the United States Supreme Court, would for the writer of this opinion, furnish a sufficient basis for the success of this appeal. The Court, however, is not inclined to view matters thus. Obviously *Quisumbing v. Lopez* is not squarely in point. Here there was no pressure of a daily deadline to meet, no occasion to act with haste as the picture of respondent was published in a weekly magazine. Moreover, there is the added requirement of reasonable care imposed by such decision which, from the facts here found, appeared not to be satisfied. It cannot be concluded then that the plea of petitioners is sufficiently persuasive. The mandate of press freedom is not ignored, but here it does not speak unequivocally. It is not decisive of the basic issue. By itself, it does not have a controlling significance. So we hold.

4. Petitioners would make much, likewise, of their correction, which has all the force of a retraction, as a basis from being absolved from any pecuniary responsibility. The present Chief Justice in *Policarpio v. Manila Times*[29] restated the controlling principle: "We note that the news item published on August 13, 1956, rectified a major inaccuracy contained in the first article, by stating that neither Col. Alba nor the PCAC had filed the aforementioned complaints with the city fiscal's office. It, likewise, indicated the number of sheets of stencil involved in said complaints. But, this rectification or clarification does not wipe out the responsibility arising from the publication of the first article, although it may and should mitigate it (*Jimenez vs. Reyes*, 27 Phil. 52)."[30]

The correction promptly made by petitioners would thus call for a reduction in the damages awarded. It should be noted that there was no proof of any actual pecuniary loss arising from the above publication. It is worthwhile to recall what Justice Malcolm referred to as the tolerant attitude on the part of appellate courts on this score, the usual practice being "more likely to reduce damages for libel than to increase them." [31]

WHEREFORE, the decision of respondent Court of Appeals of August 25, 1966 affirming the lower court decision of March 22, 1958 is hereby modified, petitioners Eugenio Lopez and Juan T. Gatbonton being ordered to pay jointly and severally the sum of P500.00 as moral damages and the additional amount of P500.00 for attorney's fees. Costs against petitioners.

Concepcion, C.J., Reyes, Zaldivar, and Teehankee, JJ., concur.

Castro and Barredo, JJ., in the result.

Dizon, J., dissents in a separate opinion.

Makalintal and Villamor, JJ., did not take part.

[1] The above statement of facts appearing in the Petition, pp. 1-5 was accepted in the decision now on appeal by respondent Court. Vide Appendix, Brief for the Petitioners, pp. 52-61.

[2] 76 Phil. 669 (1956).

[3] Ibid, p. 676.

[4] Section 1, Act No. 277 (1901).

[5] According to Section 11 of the Act: "In addition to the criminal action hereby prescribed, a right of civil action is also hereby given to any person libeled as hereinbefore set forth against the person libeling him for damages sustained by such libel, and the person so libeled shall be entitled to recover in such civil action not only the actual pecuniary damages sustained by him but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think will be a just punishment to the libeler and an example to others. Suit may be brought in any Court of First Instance having jurisdiction of the parties. The presumptions, rules of evidence, and special defenses herein provided for criminal prosecutions shall be equally applicable in civil actions under this section."

[6] Art. 2219 (8).

[7] Causin v. Ricamora, 5 Phil. 31 (1905); Causin v. Jakosalem, 5 Phil. 155 (1905); Worcester v. Ocampo, 22 Phil. 42 (1912); Jimenez v. Reyes, 27 Phil. 52 (1914); Sotelo Matti v. Bulletin Publishing Co., 37 Phil. 562 (1918); Kunkle v. Cablenews-American, 42 Phil. 757 (1922); Phee v. La Vanguardia, 45 Phil. 211 (1923); Oliver v. La Vanguardia, 48 Phil. 429 (1925); Santiago v. Calvo, 48 Phil. 919 (1926); El Hogar Fili-pino v. Prautch and Poblete, 49 Phil. 171 (1926); Guevara v. Almario, 56 Phil. 476 (1932); Lu Chu Sing v. Lu Tiong Gui, 76 Phil. 669 (1946); Quisumbing v. Lopez, 96 Phil. 510 (1955); Sison v. David, L-11268, Jan. 28, 1961, 1 SCRA 60; Tolentino v. Baylosis, L-15742, Jan. 31, 1961, 1 SCRA 396; Policarpio v. Manila Times Pub. Co., L-16027, May 30, 1962, 5 SCRA 148; Duque v. Santiago, L-16916, Nov. 29, 1962, 6 SCRA 661; Dizon v. Encarnacion, L-18615, Dec. 24, 1963, 9 SCRA 714; Deaño v. Godinez, L-19518, Nov. 28, 1964, 12 SCRA 483; Corpus v. Cuaderno, L-16969, April 30, 1966, 16 SCRA 807; Jimenez v. Cabangbang, L-15905, Aug. 3, 1966, 17 SCRA 876; Imperial v. Ziga, L-19726, April 13, 1967, 19 SCRA 726; Ubarra v. Biscom Employees Coop. Asso., L-25332, Oct. 14, 1968, 25 SCRA 498; Deles v. Aragona, Adm. Case No. 598, March 28, 1969, 27 SCRA 633.

[8] Newell, Slander and Libel, 4th ed., 259-260 (1924). Cf. Gatley on Libel and Slander, 5th ed., 19-20 (1960).

[9] Peck v. Tribune Co., 214 U.S. 185 (1909); Wandt v. Hearst's Chicago American, 109 N.W. 70 (1906); James v. Ft. Worth Telegram Co., 117 S.W. 1028 (1909); De Sando v. New York Herald Co., 85 N.Y.S. 1903; Farley v. Evening Chronicle Pub. Co., 87 S.W. 565 (1905).

[10] Ostrowe v. Lee, 175 N. E. 505 (1931); Riley v. Askin and Marine Co., 132 S.E. 584 (1926); Becker v. Brinkop, 78 S.W. 2d 538 (1935); Knapp v. Post Printing and Publishing Co., 144 P. 2d 981 (1944); Corbett v. Am. Newspapers, 5 A. 2d 245 (1939); Myers v. Afro-American Pub. Co., 5 N.Y.S. 2d 223 (1938); Flake v. Greensboro News Co., 195 S.W. 55 (1938); Petransky v. Repository Printing Co., 200 N.E. 647 (1936); Lanka v. Park Entertainments, 1 N.E. 2d 42 (1936); Jackson v. Consumer Publications, 11 N.Y.S. 2d 462 (1939); Smith v. The Journal Co., 73 N.W. 2d 429 (1955); Dahl v. Columbia Pictures Corp., 166 N.Y.S. 2d 708 (1957); Greer v. Skyway Broadcast-ing Co., 124 S.E. 2d 98 (1962).

[11] Hale, Law of the Press, 3rd ed. 6 (1948).

[12] 214 US 185 (1909).

[13] Ibid, p. 189.

[14] Burton v. Crowell Pub. Co., 82 F. 2d 154, 156 (1936).

[15] Ostrowe v. Lee, 175 N.E. 505, 506 (1931).

[16] 37 Phil. 731 (1918).

[17] Ibid, pp. 740-741.

[18] Ibid, p. 742. Cf. Another decision of Justice Malcolm is United States v. Perfecto, 43 Phil. 225 (1922).

[19] El Hogar Filipino v. Prautch, 49 Phil. 171, 176 (1926).

[20] 96 Phil. 510 (1955).

[21] Ibid, pp. 514-515.

[22] 376 US 254 (1964).

[23] Ibid, p. 256.

[24] Ibid, p. 269.

[25] Ibid, pp. 270-271.

[26] Ibid, pp. 279-280.

[27] 388 US 130 (1967).

[28] Nimmer, The Right to Speak from Times to Time, California Law Rev., 935, 954 (1968).

[29] L-16027, May 30, 1962, 5 SCRA 148.

[30] Ibid, p. 156.

[31] Guevarra v. Almario, 56 Phil. 476 (1932).

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DISSENTING OPINION**DIZON, J.:**

Much to my regret I am constrained to dissent from the scholarly opinion penned for the majority by Mr. Justice Enrique Fernando.

I accept the antecedent facts of the case as set forth on pp. 2-3 of the majority opinion and, precisely on the basis thereof, I hold the view that the decision appealed from should be reversed.

The case should be resolved, in my opinion, in the light of New York Times Company vs. Sullivan, 376 U.S. 254

(1964), as the ruling therein laid down was amplified in *Curtis Publishing Company vs. Butts*, 388 U.S. 120 (1967). After considering the facts involved and the doctrine laid down in said cases, the majority opinion says that for liability in damages to arise from an alleged libelous publication, without offending press freedom, there is need to prove that the publication was made with actual malice - that is, with knowledge of its falsity or with reckless disregard of whether it was false or not.

Under the facts of the present case, there is obviously no criminal liability for libel. As far as liability in damages is concerned, it is equally clear upon the record that there is no evidence of actual malice - that is, there is no evidence showing that petitioners or their subordinates knew that the imputation made to respondent Cruz was false or that, in publishing that imputation, they had recklessly disregarded the question of whether it was false or true.

On the other hand, any liability in damages, on the part of petitioners, on the basis of tort would seem to be equally untenable. In the first place, the alleged "hoax" to which respondent Cruz' person was related as a result of the publication in question - if considered without passion and in the right perspective - ascribes to him nothing immoral or involving moral turpitude. In the second place, in the light of the circumstances surrounding the case, whatever negligence there might have been on the part of petitioners or their subordinates would amount only to what might be legitimately considered as "excusable negligence" - this eliminating any idea of malice or intention to cause injury, on their part.

PREMISES CONSIDERED, I vote to reverse the decision appealed from.

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