TROUBLE FOR ARMSTRONG.

Chicago Wife Will Insist on His Supporting Her.

HE REMAINS IN SEATTLE.

They Resort to Courts to Compel Alleged Fugitive Husband to Assist Him—State's Attorney Sprogel and Detective Tyrrell Return to Illinois—Appeal Out of Question—Armstrong Will Go Free Today.

The curtain fell on the last act of the celebrated Armstrong extradition case, for the present, at least, yesterday afternoon, when Howard O. Sprogle, assistant state's attorney of Cook county, Ill., and Detective Frank C. Tyrrell, of Chicago, left on the Great Northern train for that city. By this act they practically admit the loss of all hope of taking the prisoner back for trial. The woman who claims to be Armstrong's first and legal wife will remain in Seattle until this afternoon or tomorrow.

The case from the time of Armstrong's arrest has been full of sensational incidents and the prosecution has left no stone unturned to secure the extradition of the alleged corrupter of justice. Failing upon the charge of conspiracy to pervert the ends of justice, Armstrong, and the woman he calls his wife, Edith Armstrong, were arrested and charged with adultery. Gov. Rogers, on Saturday, refused to sign the requisition papers on this charge. Armstrong will now be released probably before Gov. Rogers sends down the remittitur, which is expected today, and which will in itself effect his release.

Chicago Officer Gives Up.

Mr. Sprogle, in speaking of the case before his departure yesterday, said:

"We have exhausted every resource to get Armstrong back. We had some idea of taking the case to the United States supreme court, but this idea has been abandoned. Mr. McElroy, Mr. Hastie and I had a long consultation today in the prosecuting attorney's office. Even if we should win our cause in the United States supreme court we would still be helpless. Armstrong could not be held in custody while the case was pending an appeal. He could leave the state before it was decided and we would be compelled to begin the fight all over again in another jurisdiction. We have given up an appeal as impracticable.

"In Chicago we have made every effort to secure Armstrong's return, and here our attorneys, Mr. McElroy and Mr. Hastie have given us all the assistance in their power. Our last resort was to bring Mrs. Armstrong out from Chicago and that has failed.

"Mrs. Armstrong will not go back with us today. When she and Armstrong separated he promised her a weekly allowance. This he paid until he left the city. She needs money to support herself and her family and she is going to make an attempt to compel him to support her by appealing to the courts if necessary.

"Instead of waiting for the remittitur to come from Olympia, the prosecuting attorney will today stipulate that Armstrong be released at once. We have done our duty and we go back entirely satisfied with the rulings of the courts here."

Armstrong is jubilant over the prospect of speedy release from jail. He has been in confinement for about six months. He has nothing further to say in regard to the case than heretofore published. He says that freedom cannot come too soon and that when it does he will probably go into business in Seattle.

Detective Tyrell Chagrined.

Detective Tyrrell is much chagrined over the outcome of the case. He has been connected with the police department of Chicago all his life practically, and says that this is the first man he has ever been sent for that he failed to bring back.

"Naturally," he remarked, "a man's first failure is not a pleasant thing. I realize that we have done our best. I feel infinitely relieved that Mr. Sprogle was out here when the case was concluded. The police department and prosecuting attorney's office in Seattle have spared no effort to assist me. I will always remember Seattle kindly, and I may some time come back again."

B. H. Piles, who, with Mr. Haight, has defended Armstrong from the start, is happy in victory.

"We have fought a hard fight for our client," he said, "and are, of course, pleased. I do not think there is any probability of further appeal. The adultery charge was made simply as a last resort to get Armstrong back to Chicago. They knew that there was nothing to hinder them arresting him for that crime before he ever left Chicago. When they got him back, I think it was their intention to try him on the first charge. According to law Gov. Rogers could not have made any different ruling.

"Armstrong can stay in Seattle as long as he pleases. The fight is ended."

JAN JOUBERT'S WAR RECORD.

Served With Stonewall Jackson and With Loring in Egypt.

Pomeroy, Wash., Independent.

It will surprise almost everybody for this editor to assert that he was well acquainted with Gen. Jan Joubert during our late war. He was colonel of a Louisiana regiment under Stonewall Jackson and we got acquainted with him in Virginia.

He went with Gen. Loring and others to Egypt and fought in the army of the khedive, and Joubert then went to South Africa.

Jackson often assigned him to a brigade, when only a colonel, such was his confidence in him.

Seattle a Hustler.

Vancouver, B. C., Province.

Its business men are alert to seize every opportunity of securing additions to their city's industries, of extending its business and increasing its population. Nothing in this line escapes their attention, and they have adopted intelligent methods of combining their efforts and directing them scientifically to the point they wish to gain. Vancouver should profit by the example of the Sound metropolis. Its citizens ought to be equally alert and equally ready to cooperate for the common advancement. Both the promptitude and the willingness to pull together displayed by the people of Seattle are well worthy of imitation here.

Embarrassments of Fame.

Walla Walla Statesman.

It seems to be a mania with many men to claim relationship or acquaintance with every prominent man when he obtains fame, just as people are also fond of asserting they are heirs to some big estate, but somehow it never materializes.

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BICYCLIST FROM DAWSON

R. P. M'LENNAN RIDES OUT TO TIDE WATER IN FOURTEEN DAYS.

Cottage City Brings Late Klondike Advices—Steamer Mocking Bird Wrecked Near Dyea—Snow Blockades on the White Pass Railroad.

Klondike advices as late as December 17 were received by the steamer Cottage City, which arrived last night from Lynn canal ports with fifty passengers. W. F. Matlock, George Burke and R. P. McLennan are the latest Klondike arrivals. Burke made the trip from Dawson to Skagway in fifteen days, while McLennan covered the distance in fourteen days, riding more than half the way on a bicycle. He says, however, that after the lakes are frozen solid and the snow on the trails is packed a little harder a good wheelman can ride from Dawson to Bennett in six days.

"The first 100 miles out from Dawson," said McLennan, "was good traveling. Then on either side of Selkirk for twenty miles the road was very rough. This side of that the road was very good, save for ten miles on the Dominion cut-off. The Canadian Development Company is cutting down with axes and mattocks the ten miles of rough road along the river this side of Selkirk, and Dumbolton is cutting down the other side, thus making the stretch on both sides suitable for double teams. Sledding is good from Caribou through to Dawson, and the road in all places, except those mentioned as rough, is as a rule packed hard and smooth as a pavement.

"All freight on scows blockaded near Thistle and Stewart is being moved to Dawson by sled, also some from Five Fingers. The Canadian Development road houses have reduced nightly charges from $2 to $1.

"The Klondike will be a greater producer next season than ever, as much dead work done in primary development last season will count. Steam thawers will help, and Sulphur, Gold Run and Dominion promise to rank among the star creeks."

The Klondike arrivals say arrangements have been perfected for a passenger sleigh line to be operated regularly between Bennett and Dawson, the first sleigh leaving the former point January 15.

Skagway passengers of the Cottage City report that the trains on the White Pass & Yukon road have run very irregularly for two weeks past. Two unsuccessful attempts were made December 29 and 30 to get to Bennett, but each day the train was stalled on the switchback.

In many places along the line it was found that the snow had packed hard, making it difficult to work the rotary plow successfully.

The little Skagway-Dyea mail steamer Mocking Bird lies on the beach near the entrance to the harbor of Dyea, wrecked from violent contact with the ice. The shore ice in places extends out two miles into the harbor. Her passengers made shore in safety. The vessel was beached.

The following first-class passengers came down on the Cottage City:

John Cline.	M. C. Orton.
B. P. Bassard.	Mrs. Orton.
Mrs. Bassard.	Mrs. J. H. HcWaters.
Mrs. George L. Rice.	Marry McWaters.
A. J. Bell.	Mrs. Jessie Minto.
D. V. Stewart.	E. G. Johnson.
E. Lloyd.	Ella Leon.
W. Wright.	A. J. Gundlach.
W. Bigelow.	E. M. Blackwell.
W. F. Matlock.	W. Geddis.
R. C. Smith.	Dora Wells.
E. L. Nelson.	Mercedes DeGar.
C. E. McKee.	Mrs. J. T. Mullen.
Nelse Winter.	W. A. D. Merritt.
George L. McNicol.	John Raber.
W. S. Sparks.	W. A. Kelly.
S. Abelson.	Josie Kate Nielson.
Mrs. M. E. Stevens.	Charles E. Crane.
G. N. Tichner.	J. O. Roundtree.
M. Helmlich.	W. H. Taylor.
V. R. Knoell.	Dell Bullock.
Mary McMahon.	M. Young.
L. R. Freeman.	

IN THE NORTHWEST CAMPS.

Record of Discoveries, Development, Dividends and Sales.

A long tunnel is being driven on the gold-bearing ledge at Silverton, Slocan, which will test whether or not wealth goes with depth on the gold properties of that camp.

⁂

A strike is reported to have been made on the Yankee Girl claim, three miles from Grand Forks, where the ore body has widened out to four and one-half feet of ore of unusual richness. A large amount of development work has been done. The ore is a quartz carrying gold and some copper.

⁂

The Silver Cup, in the Lardeau, has been developed to the extent of 1,200 feet, comprising tunnels, shafts, winzes and crosscuts, making, with the 2,000 feet already completed, 3,300 feet. During the course of this work something like 820 tons of ore have been shipped, giving a gross return of $121,000.

⁂

The mining review for the year shows how steadily Rossland is advancing. The total output was 183,670 tons, against 116,697 tons for the year 1898, or an increase of 66,973 tons over the year 1898. This product is valued at $3,306,060, against a valuation of $2,894,758 for 1898. The increase in the value of the output, therefore, for 1899 over 1898 was $501,302.

⁂

John Farrell has made a rich strike on the Bay Horse fraction, in Wellington camp. For some time he has been running a surface crosscut on a capping, and last week he encountered the ledge, which he has uncovered for a distance of fifty feet. The ore is arsenical iron, similar to that taken out of the Winnipeg about a year ago, and running over $100 to the ton.

⁂

A careful canvass of Republic shows that there are 250 men employed in and about the mines and mills. If the roads had permitted the transportation of machinery two months since, there would have been 400 men working today, and the number would have increased steadily. If conditions do not change from the present outlook, there will be 1,000 men working in the mines and mills by 1901.

⁂

The Mollie Gibson mine, on Kokanee creek, in the Nelson mining district of West Kootenay, has begun ore shipments. Bruce White, the manager, sends out word that the first shipment of a car load left December 30, that being the date of the completion of a new wagon road to the mine. "We have good ore in four tunnels," writes Mr. White. "We have lately struck a fine body of ore in No. 2 tunnel at a depth of 300 feet. I expect to ship 1,000 tons of ore this winter."

⁂

The Quilp mine, in Republic camp, is to be immediately equipped with a complete power plant. The contract has been signed and the machinery is to be delivered within four weeks. The plant includes a Rand seven-drill air compressor, which is to be equipped with as many drills as can be conveniently worked in the mine at the present state of development. The boiler is to be of 100 horse power, and an engine of corresponding capacity is to be installed. The steam hoist and steam pump will be of sufficient capacity to reach a depth of 500 feet.

AN IMPORTANT DECISION.

Rights of Tunnels and Locations on Cross Mineral Veins.

COLORADO RULING REVERSED.

Review of Contentions and Findings in the Calhoun-Ajax Case, With an Interesting Criticism of the Questions Involved — Differences Between State Railways Now to Be Settled by the Federal Court.

An exceedingly important decision in the Calhoun-Ajax case, involving the question of the rights of tunnels and of locations on cross veins, has been rendered by the supreme court of Colorado, and as it is a matter of interest to every lode miner in the land, the Post-Intelligencer presents a review of the contentions and the findings, together with a legal criticism of the subject.

Essential Facts of the Case.

According to the decision the essential facts seem to be:

1. The Calhoun was owner of a lode location, crossing obliquely several locations belonging to the Ajax, and of a tunnel location, also crossing them.

2. The Ajax was owner of several lode locations, all originally made, and subsequently perfected (by the issuance either of the receivers' receipt or of the United States patent), before the location of the lode or the tunnel of the Calhoun.

3. In the court below the Ajax had sought to recover damages for ore extracted by the Calhoun from beneath the surface of the Ajax locations, and also to have the Calhoun enjoined from any further such extraction of ore, and from extending its tunnel under the said surface.

4. The Calhoun had pleaded as a defense in that court that it possessed the right to extract the said ore because the ore belonged to its located lode, which crossed obliquely, in its strike, the locations of the Ajax, and was, as regarded the lodes of those locations, a cross lode; and further, that it possessed the right, by reason of its tunnel location, to continue its tunnel under the surface of the Ajax locations, and to appropriate such "blind" lodes as might be discovered in the said tunnel, as well as to cut and work, by means of said tunnel, its own located "cross lode," notwithstanding the ownership of the surface by the Ajax, through its prior locations.

5. The court below gave judgment on all points in favor of the Ajax, granting damages for the ore extracted and an injunction restraining the Calhoun "from prosecuting work upon or extending its tunnel underneath" the locations of the Ajax, and "from further taking out, extracting or removing ore by means of said tunnel or otherwise from within the side lines" of the said locations, "extended downward vertically."

6. From this judgment the Calhoun appealed; and by stipulation of the parties the following four questions were submitted for the decision of the appellate court:

(a) Whether, under the circumstances, the Calhoun's tunnel was entitled to a right-of-way through the ground covered by the Ajax locations.

(b) Whether the Calhoun had acquired, by virtue of its tunnel location, the right to blind lodes; that is, lodes not appearing on the surface, and not known to exist prior to the location of the tunnel.

(c) Whether the Calhoun was entitled to ore contained in its cross lode and lying beneath the surface included within the Ajax locations.

(d) Whether the Calhoun might in the trial of this case properly introduce evidence to show that on certain of the locations of the Ajax there had been prior to the location of the Calhoun's tunnel no discovery of mineral in place—in other words, that the Ajax title to said claim was, at the date of the tunnel location, not valid.

The decision of the appellate court confirmed at all points the judgment of the court below, and was against the Calhoun on the four question above stated. The treatment of the fourth question by the court was obviously in the line of many precedents, as well as of sound reasoning. At the date of the tunnel location the Ajax locations, now alleged to have lacked the necessary discovery of mineral in place, had passed through all the necessary steps of survey, advertisement, payment, etc., and had been practically perfected by patent, though, apparently the patents had not actually issued. But at the time of the trial this step also had been completed, and it was very properly held that a collateral attack upon the Ajax, thus evidenced, was not permissible.

The three remaining questions the court reduced to two, as follows:

(a) Is the Calhoun entitled to the ore in its cross lode which lies under the Ajax system?

(b) Is the Calhoun entitled to blind veins cut by its tunnel, and to the right-of-way for the said tunnel, under the said surface?

Question A Considered.

These questions may be considered in their order:

(a) The claim of the Calhoun in this respect was based upon section 2336 of the Revised Statutes, which reads as follows:

"Sec. 2336. When two or more veins intersect each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And when two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection."

The construction of this provision, both by courts and by writers on the subject, has been, in some instances, almost ludicrous. Thus, the excellent treatise of Barringer and Adams says that "cross-lodes are of course those which intersect on the strike," thus missing altogether the true bearing of the section, and proceeds to discuss, as the main question involved, the proper definition of "the space of intersection"—a matter so simple and obvious as scarcely to require elucidation. The really important point is, that section 2336 refers, not at all to intersections on the strike, but only to intersections on the dip; that is, to those intersections which involve the otherwise equally valid apex-rights of two parties. In other words, if two locators, occupying equally valid locations upon the surface, should find their lodes to cross or unite, at a point to which each has arrived by the legitimate pursuance of his lode from the apex within his claim, this section prescribes that priority of location shall determine their relative rights. Before the enactment of this section, such a conflict was liable to be determined by "geological" evidence—that is to say, by the opinions of experts as to which of the two lodes thus crossing or uniting was the more important geologically, which was the earlier and which the later, in formation, or which was the "main lode," and which a mere "branch" or "spur." It was the purpose of section 2,336 to substitute for such scientific subtleties a simple test, easily applied—namely, that of priority of location. This was a reasonable and adequate purpose; and that it concerned exclusively the intersection or union of lodes on the dip, not on the strike, is clear enough from the fact that intersections on the strike were already provided for in section 2322, which gives to each prior locator the right to lodes apexing within his location. A lode intersecting his lode on the strike would necessarily have part of its apex in his ground; and this condition of affairs would be covered by section 2322.

In the majority of instances, both of intersection and of union, the planes of the two veins are relatively oblique; that is, the intersection is on both dip and strike. But the principle above laid down can be applied without difficulty. Whoever owns that portion of the apex legally covering the ground in dispute owns the ground and the ore in it.

The wholly unnecessary assumption that section 2336 applies to intersections on the strike, led to the surprising opinion of Judge Hallett, delivered in the United States circuit court, in a proceeding connected with the case of Hall vs. Equator Company. It does not appear from the record that this opinion was required by the immediate issue before the court. In fact, after deciding that issue by relegating the parties to the trial before a jury, the court introduced its further opinion by saying that "some general remarks in addition, as to the proper construction of the act of congress, may assist the parties in that investigation." The assistance thus kindly offered in advance was based on the hypothesis that the future trial might show the existence in the disputed ground of two lodes, crossing each other on the strike. The trial showed no such state of affairs. It turned out to be a leading case on the very different question of the "divided apex." The court's general remarks had therefore no application at all.

The opinion was followed as a precedent by the supreme court of Colorado in numerous cases. Meanwhile, the courts of other states had repudiated the doctrine.

The same question arose in Montana, where the court said that the owner of a subsequent location, if his veins crossed a prior location, would be entitled only to a right of way, etc. It may be questioned whether he is, without any due legal proceedings in condemnation, entitled to even as much as that.

In California the supreme court of that state, speaking of the "Colorado rule," said, in Wilhelm vs. Silvester (101 Cal., 358), that it "would leave the rights of location in the greatest confusion," etc. From these and other judicial decisions, Curtis Lindley ("Lindley on Mines," section 560) has very properly inferred the true doctrine to be that a subsequent locator has no right to invade the territory covered by a senior valid subsisting location, except in the lawful pursuit, on its downward course, of a vein, the apex of which is properly embraced within the junior location.

Thus, there have been, on this question of the rights of junior locators upon "cross lodes," two rules, known respectively as the "Colorado" and the "Arizona-California" rules, of which the latter is by far the more reasonable, and, outside of Colorado, has received general acceptance. In the Colorado case here under review, the court has had the moral courage to abandon the "Colorado rule," and to bring the construction of the law in that state into line with both common sense and general usage. It is not necessary here to quote in detail the reasoning by which this decision was reached. In essential particulars, it agrees with that which has been followed by the courts of other states. The peculiar interest of this decision resides in the grounds which it adduces, to justify the reversal of the "Colorado rule." These are: (1) That the rule has wrought much confusion and litigation in Colorado; (2) that its correctness has been notoriously questioned by eminent mining lawyers in the state; (3) that a decision of the Colorado supreme court (in Argonaut Company vs. Turner, 23 Colorado, 466) had already given warning of a doubt concerning the rights of cross lodes, so that the "Colorado rule" could not be held as settled beyond reversal, and (4) that the matter will have to be finally decided by the United States supreme court, anyhow.

Question B Considered.

(B). The claim of the Calhoun as to the first part of this question was, that in all patents for lode claims, blind lodes are excepted, and that the patentee takes no title thereto by virtue of his patent. This proposition was more audacious than the case really required. It would have been equally sufficient, and more plausible, to maintain that the right of the patentee was made, by section 2323 of Revised Statutes, subject to the tunnel right, conferred by that section, while it might still be good against all other parties than the tunnel owner. But the ruling of the Colorado supreme court in this case covers both propositions.

Section 2323, Revised Statutes, reads as follows:

"Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing at the surface, made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

The decision under review declares, first, that a valid location of a mining claim, so long as it is in full force and effect, operates as a bar to any second occupancy of the premises so claimed, leaving open to others only such rights as do not attach to the first-comer by virtue of his location. Then, proceeding to inquire what rights, if any, are thus excepted, it points out that if the right to blind lodes be one of them, then section 2323 (granting to a locator the right to all lodes apexing within his location) and section 2322 (defining the rights of tunnel locations) would be hopelessly in conflict. Such an alleged conflict had been asserted already and the imagined difficulty had been solved by recourse to the extreme (and, with respect to this statute, whimsical and unnecessary) principle, that where two sections of a statute mutually conflict, the later in order must be deemed to be the later in origin, and to express the later intention of the legislature, and therefore to supersede the previous section. But the court takes, in this case, a more sensible view. It falls back upon the common law of mining, so to speak, and reasserts the right of priority—not in the order of the printed provisions of the statute, but in the actual appropriation of the public domain under the statute. In other words, it will not impose upon section 2323 a construction which would supersede the general fundamental grant of section 2322.

Under question B, the court goes still further and rules that the later tunnel location has not even a right of way through the ground of a prior, valid, subsisting surface location. The decision is that the tunnel has no other right of way through such ground than it would have through any other private property. State legislation may provide for such a right of way, subject to the usual formalities and precautions attending the exercise of the state's eminent domain. In some instances, state legislatures (notably that of New York) have treated the mining industry as a matter of public welfare to such an extent as to clothe it, even in private hands, with "eminent domain," and enable it, after due formal proceedings, to acquire by "condemnation" the easements (including the right of way) necessary to its prosecution. And section 2338 of the United States Revised Statutes provides that state legislatures may, in the absence of Federal laws, make such regulations, even as regards the public domain. But the first question in this case was whether section 2323 (the "tunnel section") confers, per se, and without any further legal proceedings, a right of way through prior and valid lode locations upon public mineral land. Subordinate to this arose the question whether any local legislation of Colorado has conferred such a right. Both these questions are answered in the negative. In the words of the admirable summary of the court:

"Mining rights are statutory, but not purely so. They relate to real estate; and such rights as are not defined or limited by statute are still controlled by the rules of the common law. Such rights as are conferred by a valid prior location, so long as it remains in full force and effect, are preserved from invasion . . . and are are fully protected under the rule of the common law as any other classes of real estate. Under the statute the subsequent locator has no right to penetrate a senior, valid, subsisting location, except for the purposes specified in the mining laws. . . . Such exceptions do not include the right to drive a tunnel through such a location for the purpose of discovery. . . . Our construction of section 2323 is that a tunnel site can only embrace unappropriated public domain; and that, under it, no rights are conferred to extend a tunnel through previous, valid, subsisting locations."

As a whole, this decision, reaffirming and fortifying, as it does, the famous and fundamental doctrine of the completeness and invulnerability of the title conveyed by a patent of the United States, and the equally important doctrine of the rights of a valid, subsisting location on those public mineral lands to which the United States mining laws apply, is so highly sane and wholesome that the United States supreme court is expected to affirm it.

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Miss A. Neal.	T. J. Ryan, Tacoma.
J. B. Cooper.	C. L. Walker, London.
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Louis Hendricks.	G. Simon, Portland.
D. A. Consadine.	B. B. Rich, Portland.
Dr. Markoe, "Gedney."	P. L. Sinclair, Tacoma.
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F. D. Goudey, "Grant."	C. Satterlee, "Corwin."
S. Wythe, M. D., U.S.A.	S. M. Rock, do.
C. F. Sawyer, Chicago.	A. B. Clahon, Rossland.
T. J. Beaumont, St. Joe.	J. S. Cott, Winnipeg.
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J. Hughes.	P. Lowengart, Portland.
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A. E. McBreen, do.	Mrs. R. Elliott, do.
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