

that only federal states based upon territorial groups without reference to their national composition can succeed in the long run.

This is the difficulty which he faces. He treats the desire for the perpetuation of French Canadian national identity as a *chose donée*, and more importantly, as valuable; he then argues that co-operative federalism is the best method of fulfilling this desire; but, he ignores the fact that a federal state based on national groups cannot, by virtue of its very *raison d'être*, be truly co-operative. While it may be the best vehicle for preserving the French Canadian national character, federalism must by its nature preclude any advance beyond itself to a supranational culture, a state of affairs which Trudeau professes to desire in the long run.

One might even question Trudeau's belief in the present value of national differences. Those benefits which he believes the nation to foster could, I suggest, be obtained elsewhere. He derides those who would brush aside national characters on the grounds that they will not exist forever. I do not suggest ignoring them, but rather concentrating on them to ascertain their similarities in order to build a supranational culture upon them. If, as Trudeau says, the idea of national sovereignty is reactionary, is the idea of nationalism not the same fault in slightly smaller measure?

In the preface to this collection, written in August of 1967, Trudeau says:

"The best ideologies, having arisen at specific times to combat specific abuses, become the worst if they survive the needs which gave them birth."⁷

It appears to me that Trudeau, in advancing his thesis, is guilty of his own indictment. He has accepted the belief of those to whom he refers as "counter-revolutionaries" in the value of national differences and has chosen to ignore the formulation of a plan to eradicate these differences. In the result, one may legitimately ask whether Trudeau himself is not an accomplice to *la nouvelle trahison des clercs* which he so strongly condemns.

LESLIE KATZ*

FOUR RECORDERS OF RUPERT'S LAND,¹

By Roy St. George Stubbs; (Peguis: Winnipeg), 1967; 192 pp.

ROY ST. GEORGE STUBBS—An Overview of his Legal Writing to Date

I must confess at the outset that this critique of Four Recorders is but a pretext to review and comment upon in general Mr. Stubbs' count-

7. P. xxii.

* Of the Manitoba Bar.

1. Hereinafter referred to as "Four Recorders."

less and varied contributions to legal writing up to the present time. He has been a much more prolific and versatile writer than, I am sure, very many people truly appreciate. I shall confine myself in this issue of the *Journal* to Mr. Stubbs' books and conclude in the next issue by referring to his many articles, editorials, letters and book reviews which have appeared in a host of publications.

In the author's own words, *Four Recorders* "is an attempt to rescue four men [Adam Thom,² Francis Godschall Johnson, John Bunn and John Black], who laboured valiantly in the service of the law during the infancy of Western Canada, from the twilight of history into which they have been allowed to fade."³ These four men in turn occupied the position of Recorder of Rupert's Land which was established by the Governor and Committee of the Hudson's Bay Company in London in 1839 "to meet a long-felt need for a company official with legal training . . . The Recorder's duties were to direct the proceedings of the General Quarterly Court and to serve as a member of the Council of Assiniboia."⁴

In comparison to two of Mr. Stubbs' earlier books, *Lawyers and Laymen of Western Canada*⁵ and *Prairie Portraits*,⁶ *Four Recorders* is much more than a series of biographical portraits. In addition to dealing with the backgrounds, careers and personalities of the four Recorders, Mr. Stubbs gives the reader insights into the development of the administration of justice in Rupert's Land up to 1839,⁷ the style of life in the Red River Settlement,⁸ the memorable escapades of the first lawyers active in the Red River Valley,⁹ the composition of the laws and codifications thereof passed by the Council of Assiniboia, and the nature of the cases heard by the General Quarterly Court.¹⁰

2. The chapter dealing with Adam Thom is, as Mr. Stubbs acknowledges, an expanded version of an article by him which appeared in (1963) 1 *Man. Law School J.* 121.

3. Author's Note.

4. P. 5. It ought to be pointed out that contrary to what some readers might have understood from a reprinted version of Frederick Read's article, *Early History of the Manitoba Courts*, 1937) 10 *Man. Bar News* 451, William Robert Smith was never appointed to the position of Recorder; rather, he was appointed a Clerk to the Recorder. Also, it ought to be noted that F. G. Johnson served in addition as the first and only Recorder of Manitoba from 1870-72.

5. (Ryerson Press, Toronto, 1939); hereinafter referred to as "Lawyers and Laymen."

6. (McClelland & Stewart, Toronto, 1954).

7. Pp. 1-5; Mr. Stubbs outlines this development very briefly and refers the reader to the works of other essayists. Concerning this material, I wonder why Mr. Stubbs did not refer the reader at this point in the book to a later point in the book, at pp. 109-112, where he elaborates upon the important Council meeting on February 12, 1835 preceding the reconveyance of the Selkirk grant.

8. Which was reflected to some extent in the law administered by the General Quarterly Court (see p. 157).

9. Adam Thom, Frank Lared Hunt, and Enos Stutsman.

10. In connection with the laws passed by the Council and the cases in general heard by the General Quarterly Court, Mr. Stubbs acknowledges that he relied largely on what might be termed the wellspring on these matters, namely E. H. Oliver's, *The Canadian North-West* (Government Printing Bureau, Ottawa, 1914), 2 vols.

In regard to the cases heard by the General Quarterly Court, *inter alia*, Mr. Stubbs delves in some detail into all of the leading cases, such as the Calder Trial, 1848 (wherein the Court exceeded its jurisdiction in trying an offence punishable by death¹¹),¹² the Sayer Trial, 1849 (which signalled the end of the Hudson's Bay Company trade monopoly and brought on Thom's dismissal as Recorder),¹³ *Foss v. Pelly*, 1850 ("the most celebrated civil suit ever tried in the Courts of Assiniboia involv[ing] the leaders of high society in Red River"),¹⁴ *Matheson v. Thom*, 1850 (a strange case involving the dismissed-Recorder-then-Clerk of the Court,¹⁵ *Regina v. Patneaud and La Doux*, 1859 (at which one of the accused, contrary to the then prevalent common law position, was enabled to testify at the trial),¹⁶ and the Corbett Trial, 1863 (the end result of which was a demonstration that "law had broken down in Red River for want of an effective means to carry out its sanctions").¹⁷

In addition, Mr. Stubbs has included from time to time through the book personal editorial comments, a few of which I think bear repetition. Speaking of F. G. Johnson's bilingualism, Mr. Stubbs says;

"... Truly, any man, anywhere in Canada, yesterday, today, or tomorrow, who has command of Canada's two languages, if not worth two men, is, at least, a better man because of his ability to cross the abyss between the 'two solitudes' and enter into the two great cultures, which form the warp and woof of the civilization which is emerging, gradually, as distinctly Canadian. And he would be a rash man, or perhaps, only an ignorant man, or a prejudiced one (and there are many in both categories on both sides of the abyss), who would state dogmatically which culture has made, is making and is likely to make, the greater contribution [sic] to that civilization — civilization being defined, in this context, not as material prosperity, as represented, for example, by better bathtubs, or better and faster means of travelling over, or above, the surface of the earth, but by cultural growth which flourishes only in a soil nourished by the arts, science and the humanities."¹⁸

Speaking of John Bunn's mixed blood, in the light of the high position which he was able to attain and the truly tremendous contribution to the Settlement which he was able to make, Mr. Stubbs makes the following point concerning racial prejudice;

"In a young society, when men, regardless of the colour of their skins, live level with each other, in a stern struggle against an unfriendly environment, there is no time for such frills as racial prejudice. All men are then 'of the same size under the high stars.'

11. See also the Saulteaux Indian Case, 1845 at p. 12 and the Jane Heckenberger Case, 1852 at pp. 121-23.

12. Pp. 13-14.

13. P. 26.

14. P. 36.

15. P. 32. See also an article by Mr. Stubbs on this case in *The Beaver* (Hudson's Bay Company, Winnipeg) Summer, 1968, p. 17.

16. Pp. 124-25.

17. P. 147. From this case onwards the authority of the Hudson's Bay Company insofar as the administration of justice was concerned ran downhill steadily as evidenced by other subsequent cases, such as the Desmarais Trial, 1866 (pp. 160-61), *Schultz v. McKenney*, 1865 (p. 163) and the McLean Trial, 1868 (p. 161-63), in which the decrees and majesty of the Court were openly flouted.

18. P. 51.

'The standards of the new West were built upon achievement,' said John Kinsey Howard, in his superb study of "the New Nation," 'not upon breeding or social standing, and upon skills rather than upon wealth. The scholar and aristocrat and the prosperous were respected if they could prove their usefulness to the community, but it behooved them to acknowledge the social equality of their neighbors: many a "gentleman" owed his life to an illiterate half-breed guide.'

Racial prejudice is a weed which has to be planted in young minds.

As Lieutenant Gable has it, in the delightful musical, *South Pacific*:

'It's not born in You! It happens after you're born. . . .
You've got to be taught to be afraid
Of people whose eyes are oddly made,
And people whose skin is a different shade—
You've got to be carefully taught.'

Racial prejudice came late to Red River . . ."19

And further concerning the Metis and Half-Breed way of life, Mr. Stubbs paraphrases a favourite novelist;

" . . . The Purpose of life is life, 'life qua life,' as Canada's great novelist, Frederick Philip Grove, once said. Life does not derive its true values from such things as central heat and indoor plumbing, coca-cola and two cars in every garage. The Metis and the Half-breeds of the Western prairies had a good way of life, because they chose it for themselves, if for no other reason. But it was a way which was not destined to last, for they lacked the power to protect it. In the march of 'civilization,' the technically proficient always triumph. The bow-and-arrow is never a match for the rifle; nor the rifle for the gatling gun—the present prospect is too bleak and uncertain to ascend any further up the scale of the weapons of destruction, the weapons which, to this point in time, have ultimately determined the fate of men and nations."20

Finally, after quoting excerpts from speeches made by John Black to the Convention which met on January 25, 1870 in the Court House, Mr. Stubbs adds;

"How flat, stale and unprofitable do the speeches of our modern organization men, turned politicians, sound in comparison to Black's free flowing gift of speech. Nor were his wit and eloquence lost upon his unsophisticated audience, whose wits were fresh and clear, whose minds had not been deadened by years of exposure to the banalities of radio and T.V., and the monstrosities which issue from that gilded capital of entertainment, Hollywood, U.S.A.

"Politics has become a branch of the advertising industry and various brands of political goods, all much the same, are retailed over our modern means of communication with the same breathless enthusiasm as tooth-paste or breakfast foods."21

Considering the book from the technical point of view, it is quite obvious from the methodical footnoting that Mr. Stubbs, true to his standards, has done his research thoroughly. Mr. Stubbs is to be commended for bringing and tying together in such a readable form the multitude of tidbits of information on the four Recorders and the General Quarterly Court which exist in a virtually unmanageable num-

19. Pp. 95-96.

20. P. 101.

21. Pp. 182-83.

ber of source materials. The presence of the footnotes ensures that Mr. Stubbs' efforts in chronicling the last thirty-one years of the General Quarterly Court of Assiniboia can serve as an extremely useful bank of source materials for subsequent students of the period. The book also contains an index, which unfortunately, due to someone's error is relatively useless in that the page references do not correspond to the pages of the text; as well, the book and dust jacket are adorned by portrait photographs of the four Recorders, sketches of the Old Court House and the Law Courts on Main Street circa 1880, and a General Survey of Upper Fort Garry and its immediate vicinity.

To conclude my critique of *Four Recorders*, I can do no better than to quote from the reviews of two other well-known persons; the value of their opinions lies in the faith which you can readily put in their opinions based upon their reputations. W. L. Morton described *Four Recorders* as "a needed and valuable addition to the written history of the Red River Settlement and the Canadian West." He stated further that "Mr. Stubbs is a practised historian and has once more carried out a study very well."²² E. K. Williams said;

"This book is one which calls for careful study and much thought but the style in which it is written makes its study a pleasure . . . it is in my opinion Mr. Stubbs' best work . . . this book should be in the library of every lawyer, every historian . . . every student of the social sciences and every person who has any interest in Manitoba and Canada. This book should not only be in the libraries, it should be taken from the shelves and read often."²³

Four Recorders was not Roy Stubbs' first mission in preserving from oblivion some of the men who exercised their talents in Western Canada in the early days. As indicated earlier, two of Mr. Stubbs' three other books, *Lawyers and Laymen of Western Canada*²⁴ and *Prairie Portraits*,²⁵ are pen portraits of fourteen such men.²⁶ Turning first to *Lawyers and Laymen*, it was published in 1939. It was not, however, Mr. Stubbs' first venture into print. In 1936 three items appeared in the *Manitoba Bar News* concerning Roy Stubbs. The first item read simply,

"Before Adamson, J., Roy St. George Stubbs, B.A., LL.B. . . . [was] called to the Bar recently."²⁷

22. The *Winnipeg Free Press*, November 18, 1967. However, Mr. Stubbs with characteristic humility does qualify his research efforts in his Author's Note at the beginning of the book: "I have had to set limits to my research. If I may adapt the words of F. W. Maitland to my own purpose, I have not beaten every thicket out of which may have flown a bird worth powder and shot, nor have I turned up every stone under which may have lurked a toad with a jewel in its head."

23. The *Winnipeg Tribune*, November 18, 1967.

24. *Supra*, note 5.

25. *Supra*, note 6.

26. And, Mr. Stubbs has performed this important service in regard to many other gentlemen in the form of articles upon which some comment will be made in the next issue; indeed, several of the fourteen sketches in these two books first appeared as articles in other publications.

27. (1936) 8 *Man. Bar News* 297 (No. 10, May).

The other items were sketches by Mr. Stubbs of The Late N. F. Hagel²⁸ and Montagu Williams, Q.C.²⁹

Lawyers and Laymen contains pen portraits of two men who made their major contributions from the bench,³⁰ three leading advocates,³¹ one agriculturalist³² and two newspapermen.³³ The book was generally well received; typical of the reaction of most, if not all, of the reviewers was that of The Edmonton Journal,

"The value of [the] . . . book to all Canadians is the fact that it has salvaged and preserved for posterity these little stories that delighted westerners for many years but that can be lost so easily."³⁴

and that of Charles J. Woodsworth of the Vancouver Province,

"Now that the West has come of age, a new and possibly less buoyant generation tends all too quickly to forget [the colourful and able] . . . giants of the past who in their day were the supreme actors on the stage of a rapidly-expanding pioneer civilization."³⁵

All of the sketches are, to say the least, very readable, interesting and some of them are highly entertaining. They are laced with many examples of the swift and brilliant repartee of the court room and the election platform, and with an ample number of well-told stories and anecdotes. Unfortunately, the absence of any references to some extent emasculates the sketches as sources for further research.

Concerning the sketch on Sir Hugh John Macdonald, Arthur Deacon of The Globe and Mail wrote,

"Justice, of [sic] a fair attempt at it, is at least done Sir Hugh John Macdonald, son of Sir John A., briefly Premier of Manitoba and long the most loved and highly respected of police magistrates. Mr. Stubbs lays bare, for the first time in print, how the Conservatives diddle Hugh John over the Brandon election when they wanted to get rid of a leader too openly honest."³⁶

Mr. Stubbs ended his sketch of Sir Hugh John stating,

". . . the thought keeps recurring that personality becomes more pedestrian as we advance from pioneer days—that character becomes more colourless as life becomes more complex. As the Winnipeg Free Press said editorially at the time of his death: "The men who came to Winnipeg in the days

28. (1936) 8 Man. Bar News 313, 9 Man. Bar News 333; another version of this sketch appears in *Lawyers and Laymen*.

29. (1936) 9 Man. Bar News 337, 362, 367; indeed, in the years 1936-39, prior to the publication of *Lawyers and Laymen*, Mr. Stubbs had no less than seventeen sketches in total published in various law journals and periodicals. And, it ought to be noted that, during the years 1930-32 roughly, Mr. Stubbs prior to commencing his legal studies toiled as a reporter on the staff of The Winnipeg Tribune.

30. Sir Hugh John Macdonald and Chief Justice Prendergast.

31. Nathaniel Francis Hagel, Robert Andrew Bonnar and Patrick James Nolan. Incidentally, substantially similar versions of the Hagel and Bonnar sketches can be found in (1936) 8 Man. Bar News 313, 9 Man. Bar News 333 and (1937) 10 Man. Bar News 497, and the Nolan sketch first appeared in (1939) 17 C.B.R. 265.

32. Samuel Larcombe.

33. Nicholas Flood Davin who was also a lawyer and Robert Chambers Edwards. See also in regard to the latter an article by Mr. Stubbs which appeared in *The Beaver* (Hudson's Bay Co., Winnipeg) Autumn, 1955, p. 34.

34. December 15, 1939.

35. November 18, 1939. Compare this comment with one which appeared in (1939-40) 9 *Fortnightly L.J.* 160.

36. December 9, 1939.

of small things and became, in their age, landmarks in the community have all been men with a personality and individuality which the conditions of today do not seem to develop . . ."³⁷

I think that it is fair to say that while the reviewers generally lauded the book, reaction was mixed, in regard to Mr. Stubbs' writing style at this juncture. Typical of the mixed reaction were, on the one hand, those of *The University of Toronto Law Journal*,

"Mr. Stubbs has a distinctive flair for the fine phrase, for an appreciation of record and memory in an imaginative setting, and for bringing into relief striking scenes and episodes connected with some eight western figures. The writing is stimulating and attractive . . ."³⁸

and *Diogenes of The Winnipeg Free Press* who appreciated,

"his descriptive verve, his analytical talent and his decidedly zippy style."³⁹

and, on the other hand, that of G. F. Curtis,

"The reader must not look for fine writing; indeed the author freely confesses that he is an amateur, and makes no claim to literary distinction."⁴⁰

One particularly remarkable feature of Roy Stubbs' writing style, to which a passing reference ought to be made before leaving *Lawyers and Laymen*, is his use of heady metaphors; here are a few examples,

" . . . the stream of Canadian poetry would flow less muddily today if its headwaters had been fed by more poets of . . . [Davin's] power";⁴¹

"[Davin's] . . . eloquence was a pump, fed by no tiny spring but by a mighty reservoir";⁴²

"[Sir Hugh John Macdonald] . . . did not sink his mental teeth very deep into the fruit of knowledge . . . but . . . he struck up an intimate acquaintance with books which lasted throughout his lifetime";⁴³

"[Sir Hugh John Macdonald] . . . never wore the stiffly-starched prison uniform of any political party";⁴⁴

"Through the dross of [Nolan's] . . . faults and follies there ran a vein of the purest gold";⁴⁵

"[Nolan's] after-dinner speeches were rare soufflés of wit and whimsy flavoured with a fragrance of the philosophy of Horace and Old Omar."⁴⁶

Prairie Portraits, which was published in 1954, is of the same genre as *Lawyers and Laymen*; that is to say, it contains, as they have been variously described, pen portraits, capsule biographies, side glances, or brief personal character sketches of six men. Again, this effort by

37. P. 70.

38. (1941-42) 4 U.T.L.J. 236.

39. October 14, 1939.

40. *The Dalhousie Review*, April, 1940.

41. P. 14.

42. P. 16. A reviewer in *Law Notes*, April 1940 noted that "the author's frequent use of poetry and figures of speech, reveal a charming descriptive style. As an example, in speaking of . . . Davin's continued interest in the ladies even in his old age, he says 'The gulf stream of his youth flowed into the arctic regions of his life [P. 20]'"

43. P. 50.

44. P. 55.

45. P. 169.

46. P. 170.

Mr. Stubbs was praised by all who reviewed it, with some minor reservations. Several reviewers questioned the title in view of the fact that five of the six subjects were principally Winnipeg men,⁴⁷ not one of them was born on the prairies and all of them came from British stock.

Concerning the book in general, and the style and biographical technique displayed in it by Mr. Stubbs, three prominent and well-qualified critics have already put pen to paper: Grant Dexter wrote in *The Winnipeg Free Press*,

“. . . [Lawyers and Laymen] covered a wider and more varied field . . . While the first volume was good, the second far excels it, in the sweep of events, in the insight into character and in the quality of writing”;⁴⁸

Norman Ward summed up his review in the *Canadian Forum* saying,

“As a biographer, Mr. Stubbs is both cautious and objective, and primarily a chronicler and commentator. He does not probe into motives, or try to dramatize his subjects’ lives. He writes a clear and formal prose, and most of his pages are the depositions of an intelligent and interested witness. But while the style lacks warmth and colour, and thus helps keep the portraits two-dimensional, the author’s choice of subjects and incidents shows that he himself does not”;⁴⁹

W. Kent Power in unreserved praise of *Prairie Portraits* said,

“To his chosen task Mr. Stubbs has brought a keen insight into character, a tolerant and balanced judgment, and a sound style. His approach is warmly human rather than scholastic, hence the readableness of the book . . . A word or two in praise of the author’s style. It is that of a man who can write. An occasional writer today, like a canoeist in the midst of rapids, must never relax his guard against the lurking dangers which beset him on all sides—the prevalent pretensions and unintelligible academic and bureaucratic jargons, journalistic clichés, the preciousness of the literati, and the vapour-enveloped meanderings of the stream-of-consciousness school. Mr. Stubbs steers clear of all such conceits; his sentences are well-knit and grammatical, his diction lucid and unaffected and free from ‘fat,’ the redundancy and verbosity which so often deform the literary efforts of his profession.”⁵⁰

I wish to add to these comments two of my own. Firstly, G. R. Schmitt writing in the *Canadian Bar Review* pointed out that “too frequently, when . . . [Mr. Stubbs] wishes to show that a particular person had a certain characteristic he makes his point by giving a well-known quotation instead of a real-life incident involving the person he is describing”;⁵¹ I agree that Mr. Stubbs tended in some sketches to insert too many quotations,⁵² but for the record it ought to be noted in pass-

47. A. J. Andrews, K.C. and E. J. McMurray, Q.C., P.C., who were leading members of the Bar for many years, John W. Dafoe, a long-time editor of *The Winnipeg Free Press*, F. J. Dixon, a radical politician, humanitarian and sometime M.L.A., and Mr. Justice Dysart; Lord (R.B.) Bennett practised law in Calgary before becoming the Prime Minister of Canada.

48. April 16, 1955.

49. March, 1955.

50. (1957-58) 12 U.T.L.J. 108.

51. (1955) 33 C.B.R. 618.

52. For example in the sketch of Dafoe which is twenty-five pages in length, he quotes from Gibbon, Emerson (twice), Socrates, Macaulay, Dr. Johnson (twice), Villard, Goldwin Smith, Pulitzer, Desmond McCarthy, W. T. Stead, Confucius, Sir Richard Burton and others anonymously.

ing in order to allay the suspicion of Mr. Stubbs which this tendency might engender in some quarters, that the man is exceptionally well-read and he has that true love of books which naturally nurtures the ability to recall the apt quotation. Secondly, similar to *Lawyers and Laymen*, Mr. Stubbs frustratingly fails to add a single footnote for the reader who might wish to do some further research; and likewise, there is no index.

A majority of the reviewers chose the sketch of F. J. Dixon as the most captivating of the six profiles with that of Lord Bennett a close second. Fred Dixon was surely a man whom Roy Stubbs admires greatly for an "intimacy of touch and feeling" and a "warmth and understanding which are not" present to the same extent in the other sketches make it possible for it to be said that "if you had never known Fred Dixon you would feel, after [reading Mr. Stubbs' sketch] . . . that you had met him in the flesh; something of the ardour of soul of the man would have been transmitted to you."⁵³ Of the Lord Bennett sketch Arthur Deacon commented,

"This is the first candid appraisal we have seen anywhere of the late R. B. Bennett's character and career . . . Mr. Stubbs . . . with absolute candor portrays this strong and able careerist, full of ambition for success. Gradually we are shown the humourless, headstrong man winning cases, getting rich, becoming prime minister as he had boasted when a student that he would. Then, coldly, Mr. Stubbs traces the personal defeat administered to Bennett by the depression. Finally, there is the desertion of Canada, which had given him fame and wealth and power, to acquire in England a title he could not have had if he remained in Canada. As a character sketch this is first rate."⁵⁴

Mr. Stubbs' other book is a tiny tome⁵⁵ tracing the history of the four regiments of Manitoba; it is entitled *Men In Khaki*.⁵⁶ The most interesting portions of the book, I found, were the first six pages and pages 55-58, in which the exploits of the 90th Battalion and the Winnipeg Light Infantry in the North-West Rebellion are chronicled. In general, for light reading there seem to be too many names, dates and figures; and, I think that some familiarity with the military world, its jargon, and honours is presumed.

Those are the books to date by Roy Stubbs. Suffice it to say that they represent no small achievement. However, in fact they do not form the largest part of Mr. Stubbs' singular contribution to legal writing. I shall have more to say in this regard in the next issue.

CAMERON HARVEY*

53. Grant Dexter, *supra*, note 48.

54. *The Globe and Mail*, January 8, 1955.

55. If that is possible!

56. (Ryerson Press, Toronto, 1941).

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