INDEX.

New Jersey Supreme Court 10

STATE, DOMENICO GHIDELLA, Prosecutor, vs. "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," Respondent.	On certiorari.

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New Jersey, ss.:

(Seal) The State of New Jersey to "Union of Mutual Help among the population of Italian Language."

We, being willing for certain reasons to be certified of the judgment, proceedings or resolution passed by the Society "Union of Mutual Help among the population of Italian language," in a certain proceeding brought against Domenico Chidella at the suit of Mr. Ciardini, do hereby command you that you send under your seal to our Justices of the Supreme Court of Judicature at Trenton, on the thirtieth day of June, inst., the judgment, proceedings and resolution aforesaid, with all things touching and concerning the same, as fully and entirely as they remain before you,

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by whatsoever names the parties may be called therein, together with this writ that we may further cause to be done thereupon what of right we shall see fit to be done.

WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton, the tenth day of June, in the year of our Lord one thousand nine hundred and fifteen.

WILLIAM C. GEBHARDT,
Clerk.

A. O. Ciccarelli,
Attorney for Prosecutor.

Certificate of Recording Secretary.

State of New Jersey,
Hudson County.

I do hereby certify and send to the Supreme Court of Judicature, at Trenton, New Jersey, the judgment, proceedings and resolution as within I am commanded, as by the minutes of the meeting of the defendant society under my hand and seal hereto certified and annexed, more fully appears.

BENJAMIN RUSCONI,
President.

ANGELO BENZONI,
Recording Secretary.

Judgment, proceedings and resolution concerning the expulsion of Domenico Ghidella from the "Union of Mutual Help among the population of Italian language."

A regular meeting of the above named society was held on the 28th day of February, 1915, at 526 Monastery Street, West Hoboken, New Jersey. 10

Benjamin Rusconi, the President, explained that he was a witness in relation to the charges brought against Domenico Chidella and that he would not, therefore, preside at the meeting.

The Vice-President, Giovanni Clerici, presided at the meeting, during the hearing of the charges and action thereon.

He ordered the Secretary to read the charges made by Agostina Ciardini against Domenico Chidella and Giuseppi Martinelli, which were as 20 follows:

"To Domenico Chidella and Giuseppe Martinello:

I, Agostino Ciardino, charge Domenico Chidella and Giuseppe Martinelli with conduct bringing dishonor and damage upon the 'Union of Mutual Help among the population of Italian Language,' as follows:

On the 29th day of August, 1914, the said 30 Domenico Chidella and Giuseppe Martinelli, did strike and beat about the head and body the above-named Agostino Ciardino, at the meeting rooms of the above society, and did otherwise act in a manner calculated to bring dishonor and discredit upon the said society, in violation of Article 38 of the Constitution and by-laws.

You are hereby notified to appear at the next meeting of the above society, which will be 40 held on November 22nd, 1914, at 2 P. M., with

your witnesses to answer said charges, as action to expel you for the above cause will be proposed and taken.

AGOSTINO CIARDINI.

BENJAMIN RUSCONI,
President.

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GIUSEPPE GOBBATO,
Secretary.

The Vice-President then asked Domenico Chidella and Giuseppi Martinelli, if they had been duly served with written copies of the charges and notified to be present at this meeting and both men answered in the affirmative.

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The members then heard the statements of the witnesses in support of the charges and also Mr. Chidella and Mr. Martinelli, and their witnesses in defense of said charges.

The members then discussed the charges and the statements for and against the same.

After said discussion a motion was made and seconded that the charges be dropped. Motion was lost by a vote of 21 for to 27 against.

Motion was then made and seconded that Domenico Chidella and Giuseppi Martinelli be expelled from the society and motion was carried by vote of 27 for to 21 against.

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The vote was then announced and the Vice-President formally declared that Domenico Chidella and Giuseppe Martinelli were by said vote expelled from the "Union of Mutual Help among the population of Italian Language."

BENJAMIN RUSCONI,
President.

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ANGELO BENZONI,
Recording Secretary.

Certificate.

I, Angelo Benzoni, Recording Secretary of the "Union of Mutual Help among the population of Italian language," do hereby certify that the foregoing is a true copy of the judgment, proceedings and resolution, together with all proceedings for the making of the same, as fully and entirely as before me they remain or are in my custody and control. 10

Witness my hand and the seal of said Society at West Hoboken, this 28th day of June, 1915.

ANGELO BENZONI,
Recording Secretary.

Stipulation of Facts. 20

NEW JERSEY SUPREME COURT.

STATE, DOMENICO GHIDELLA, Prosecutor, vs. "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," Respondent.	On Certiorari.

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It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the following statement of facts shall be considered by the Court on the argument on the writ of certiorari granted herein, in place and stead of depositions: 40

FIRST.—That the respondent is a benevolent association incorporated under the laws of the State of New Jersey.

SECOND.—That the prosecutor was, at the time of his expulsion, a member of said association for many years, and before said time a member in good standing of said association, and also was one of the founders of the said association.

THIRD.—That the prosecutor was charged by a formal charge in writing and was expelled from the said association for an alleged violation of Article 38 of the Constitution and By-Laws of the said respondent association, which reads as follows:

> Article 38. "Nel caso che un membro si fosse fatto ricevere nella Societa mediante false informazioni o che tenesse condotta notoriamente cattiva, o in qualsiasi altro modo recasse danno o disonore alla Societa, tal membro potra essere espulso dalla medesima in riunione a maggioranza di voti,"

which said article, translated, would read as follows, to wit:

> "In case a member has himself admitted in the Society under false information or has a notorious bad conduct, or in any other way brings damages or dishonor to the Society, said member may be expelled from the same in reunion by a majority vote."

FOURTH.—That the prosecutor and all members have been admitted to respondent society and all regular meetings of same are and have been held

on Sundays; that the hearing of said charges against the prosecutor was conducted on Sunday, the 28th day of February, 1915, and upon which date a resolution was offered, carried and passed expelling said prosecutor from said association.

FIFTH.—That the charges for which the prosecutor was charged with having violated Article 38 consisted of an alleged assault and battery alleged to have been committed by the prosecutor upon the person of one Agostina Ciardina, a member of said association, at a meeting of the Executive Board of said association, held in the regular meeting room of said association. That the said Executive Board consisted at that time of Benjamin Rusconi, President; Giuseppi Gobbato, Secretary; Louis Zanfrini, Treasurer; Geovanni Cisi, President of Sick Committee; Augostina Ciardini, Angelo Cozza and Antonio Scarmolin, Trustees, all of whom, except the last two named, were present at the time the alleged assault was committed.

SIXTH.—That the annexed is a copy of the charges served upon the prosecutor prior to being tried and expelled from the said association.

SEVENTH.—That each member in good standing of said association is entitled to certain sick benefits and other benefits, and that the said association has a treasury to cover the said benefits, to which and in which the members of said association have rights.

Dated, September 20th, 1915.

A. ORESTES CICCARELLI,
Attorney for Prosecutor.

HENRY CARLESS,
Attorney for Respondent.

To Domenico Ghidella and Giuseppe Martinelli:

I, Agostino Ciardini, charge Domenico Ghidella and Giuseppe Martinelli with conduct bringing dishonor and damage upon the "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," as follows:

On the 29th day of August, 1914, the said Domenico Ghidella and Giuseppe Martinelli did strike and beat about the head and body the above named Agostino Ciardini at the meeting rooms of the above Society, and did otherwise act in a manner calculated to bring dishonor and discredit upon the said Society, in violation of Article 38 of the Constitution and By-Laws.

You are hereby notified to appear at the next meeting of the above Society, which will be held on November 22nd, 1914, at 2 P. M., with your witnesses, to answer said charges, as action to expel you for the above cause will be proposed and taken.

B. RUSCONI, President.
G. GOBBATO, Secretary.

Signed by
Agostino Ciardini.
(Seal of Society and dated Oct. 26th, 1914.)

A Domenico Ghidella e Giuseppe Martinelli:

Io, Agostino Ciardini, accuso Domenico Ghidella e Giuseppe Martinelli di condotta recante disenore e danno all' "UNIONE DI MUTUO SOCCORSO FRA LA POPOLAZIONE DI LINGUA ITALIANA," come segue:

Nel giorno 29 Agosto, 1914, i detti Domenico Ghidella e Giuseppe Martinelli, hanno ferito e per-

cosso alla testa e persona il suddetto Agostino Ciardini nella sala della adunanze di detta Societa, ed agirono altrimenti in un modo calcolato recante disonore e discredito nella detta Societa, in violazione dell'articolo 38 della Costituzione e regolamenti.

Voi siete colla presente notificati di comparire alla prossima adunanza della detta Societa, che verra tenuta il 22 Novembre, 1914, alle ore 2 P. M., colle vostre testimonianze a respondere a detta accusa, poiche verra proposto e presa azione di espellervi per la causa su esposta.

B. RUSCONI, Presidente.
G. GOBBATO, Segretario.

Firmati,
Agostino Ciardini.
(Seal of Society, and dated Oct. 19th, 1914.)

Reasons for Setting Aside Resolution, etc.

NEW JERSEY SUPREME COURT.

STATE, DOMENICO GHIDELLA, Prosecutor, vs. "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," Respondent.	In Certiorari.

The said Domenico Ghidella, by A. Orestes Ciccarelli, his attorney, comes and prays that the judg-

ment of "Union of Mutual Help among the population of Italian Language" and the resolution passed expelling him from the Society on the twenty-eighth day of February, 1915, may be reversed and set aside, for the following reasons, to wit:

10 FIRST.—That the hearing on the charges upon which the prosecutor was tried took place on Sunday, a day of Sabbath.

SECOND.—That the said respondent, "Union of Mutual Help among the population of Italian Language," had no jurisdiction over the subject matter and proceeded without any warrant of law whatsoever to expel the said prosecutor.

20 THIRD.—Because of the judgment and resolution expelling the prosecutor from said respondent Society is, in divers other respects, contrary to law.

FOURTH.—That there was no warrant in law or in the by-laws or rules and regulations of said respondent Society which authorized the expulsion of said prosecutor on the allegations as set forth in the charges filed with the said respondent Society against this prosecutor.

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A. ORESTES CICCARELLI,
Attorney for Domenico Ghidella,
Prosecutor.

Filed June 5/15.
JAMES F. MINTURN,
J. S. C.

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Opinion.

NEW JERSEY SUPREME COURT.

February Term, 1916.

DOMENICO GHIDELLA, Prosecutor, vs. "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," Respondent.	10

Argued February 15, 1916; Decided April 10, 1916.

On certiorari, etc.,

Before Justices Garrison, Trenchard and Black. For the prosecutor, A. O. Ciccarelli. For the respondent, Henry Carless. 20

Per Curiam:

No sufficient reason is presented why the resolution of the Association expelling the prosecutor should be disturbed.

We think the charge upon which he was tried and convicted was one which warranted expulsion under the constitution and By-laws of the Association. 30

We think, also that the fact that the hearing of the charge was held on Sunday is not a sufficient reason for setting aside the resolution expelling prosecutor. He was admitted to the Association on a Sunday, all its meetings have been held on Sundays, and the Association is engaged in a charitable work such as is expressly excepted from the operation of our Vice and Immorality Act. C. S., page 5712.

Pepin vs. Society Jean Baptiste, 54 Atl., 47. 40

The proceedings brought up will be affirmed, with costs.

Notice of Appeal.

NEW JERSEY SUPREME COURT.

STATE, DOMENICO GHIDELLA,
Prosecutor-Appellant,

10 vs.

"UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE,"
Respondent-Appellee.

To

20 HENRY CARLESS, Esq.,
Attorney for Respondent-Appellee.

Sir:

TAKE NOTICE that Domenico Ghidella, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

Dated, May 26th, 1916.

30 Respectfully yours,

A. O. CICCARELLI,
Attorney for Prosecutor-Appellant.

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Reasons for Reversal of the Judgment of the Supreme Court.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE, DOMENICO GHIDELLA, Prosecutor-Appellant, vs. "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," Respondent-Appellee.	On certiorari.

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Domenico Ghidella, by A. Orestes Ciccarelli, his Attorney, comes and prays that the judgment of the Supreme Court affirming the judgment of "Union of Mutual Help Among the Population of Italian Language" and the resolution passed expelling him from the Society on the 28th day of February, 1915, may be reversed and set aside, for the following reasons, to wit:

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FIRST.—That the judgment of the Supreme Court was contrary to law.

SECOND.—That the said respondent "Union of Mutual Help Among the Population of Italian Language" had no authority over the subject matter and proceeded without any warrant in law, to expel said prosecutor.

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THIRD.—Because the judgment of the Supreme Court affirming the judgment and resolution expelling the prosecutor from said respondent Society is, in divers other respects, contrary to law.

FOURTH.—Because the judgment and resolution expelling the prosecutor from said respondent Society is in divers other respects contrary to law.

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FIFTH.—That there was no warrant in law in the by-laws or rules and regulations of said respondent Society which authorized the expulsion of said prosecutor on the allegations as set forth in the charges filed with the said respondent Society against this appellant.

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A. O. CICCARELLI,
Attorney for Domenico Ghidella,
Appellant and Prosecutor.

Rule Affirming Resolution and Judgment.

NEW JERSEY SUPREME COURT.

DOMENICO GHIDELLA, Prosecutor, vs. "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," Respondent.	On Certiorari.

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The Court having inspected the transcript and proceedings of the defendant society, returned with the certiorari in this cause, the reasons for reversing and setting aside the resolution and judgment expelling the prosecutor from the defendant society, and having heard the argument of counsel thereon, and having duly considered the same, do order that the said resolution and judgment be in all things affirmed, with costs.

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Entered May 17, 1916.

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On Motion of HENRY CARLESS,
Attorney for Defendant.

Clerk's Certificate.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the Notice of Appeal filed, and also a rule entered in the minutes of the Court in the above stated cause.

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IN WITNESS WHEREOF, I have set my hand and seal of said Court at Trenton, this Fourteenth day of June, A. D. nineteen hundred and sixteen.

WILLIAM C. GEBHARDT,
Clerk.

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Brief

New Jersey Court of Errors and Appeals

STATE, DOMENICO GHIDELLA, Prosecutor-Appellant, vs. "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," Respondent-Appellee.	On Appeal from Supreme Court.

BRIEF FOR RESPONDENT-APPELLEE.

The judgment of the Supreme Court should be affirmed for the reasons set forth in the opinion filed therein: Because

POINT I.

The respondent society had jurisdiction over the person of the prosecutor.

Case p 4 lines 10-20.

POINT II.

Respondent society also had jurisdiction over the subject matter and proceeded with the charges against the prosecutor in accordance with its constitution and By-Laws and the rules of law established governing procedure in such cases.

Case p 3 lines 20-40.
Case p 6 lines 20-40.
Case p 7 lines 10-25.

In regard to matters of discipline the courts will not interfere with a club professing to act under its rules, unless it can be shown either that the rules are contrary to natural justice or that what has been done is contrary to the rules, or that there has been mala-fides or malice in arriving at the decision, or refusal to give the member a hearing.

Zeliff vs. Knights of Pythias

53 N. J. Law 536.

POINT III.

In the case of Burt vs. Union League Club it was held that insulting a fellow member was sufficient to warrant the expulsion of the offender from the club.

Com.-Ex.-Rel. Burt vs. Union League Club, 19 Atl. 1030.

A fair interpretation of Article 38 of the Constitution and By-Laws of the respondent society must lead to the conclusion that it applies not only to conduct prior to joining respondent society; but also to conduct after becoming a member. To strike and beat about the head and body a fellow member in the meeting room of the respondent society during a meeting of its executive board is plainly an act such as to damage and bring dishonor to the respondent society and warranted the appellant's expulsion therefrom.

POINT IV.

The fact that a hearing of the charges against the prosecutor was held on a Sunday is not sufficient reason to set aside the resolution expelling him. He was admitted to respondent society on a Sunday, all its meetings, have been held on Sundays and the society is engaged in charitable work, such as is expressly excepted from the operation of our vice and immorality act.

Compiled Statutes Vol. 4 Sec. 1 Pg. 5712.

In the case of Pepin vs. Society Jean Baptiste, a Rhode Island case, it was held that:

> "A benefit association whose object is not profit, but to relieve members and their families in case of sickness and death is a charitable organization, and the transaction of its business is a work of necessity and charity and can be done on Sunday, and that the hearing of charges and expelling of a member by a benevolent association does not constitute the exercise of judicial power; but is part of the business of such society and may be done on Sunday."

Pepin vs. Society Jean Baptiste,
54 Atl. Rep. 47.

McCabe vs. Father Matthew Society
24 Hun. 149.

Respectfully submitted,

HENRY CARLESS,
Attorney and Counsel for
Respondent-Appellee.

14

New Jersey Court of Errors and Appeals

STATE, DOMENICO GHIDELLA, Prosecutor-Appellant, vs. "UNION OF MUTUAL HELP AMONG THE POPULATION OF ITALIAN LANGUAGE," Respondent-Appellee.	On Certiorari.

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BRIEF ON BEHALF OF PROSECUTOR-APPELLANT.

This is an appeal from a judgment of the Supreme Court affirming a judgment of expulsion of Domenico Ghidella, appellant, by respondent society and dismissing a writ of certiorari.

Statement of Facts.

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The appellant, Domenico Ghidella, was one of the founders of the respondent society, an association formed for benevolent purposes to provide sick and other benefits to its members. Since its formation it has acquired a large treasury to provide for such benefits. The treasury is a valuable property right to its members.

About a month prior to the 27th day of February, 1915, the relator was informed that certain

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charges had been made against him before said association, and on February 27th, 1915, he received a communication from the said association requiring his presence at a meeting thereof to be held on Sunday, the 28th day of February, 1915. The appellant attended the said meeting on said day as requested; the charge was read and contained a specification that Domenico Ghidella and one Martinelli had struck and beat one Ciardino. Witnesses in support of the charge and in defense of the same were heard. A resolution was adopted by the association at said meeting, held as aforesaid, expelling the appellant from the Association and cancelling his membership therein.

The only by-law of said Association, or article thereof which in any way refers to the expulsion of members, reads (translated into English) as follows:

> "In case a member has himself admitted in the Society under false information or has a notorious bad conduct, or in any other way brings damages or dishonor to the society, said member may be expelled from the same in reunion by a majority vote."

The basis of the charge against the appellant was that he had committed an assault and battery upon one, Agostino Ciardino (nothing more), which he denied and he was charged, tried, condemned and expelled from membership of said association under the article or by-law above set forth.

POINT I.

The association had no jurisdiction to pass the resolution and expel the said Ghidella, as he was not charged with any act which made him guilty of notorious bad conduct, or of bringing damages or dishonor to the society. 10

Even if he had an altercation with a fellow member, this could in no way be construed as notorious bad conduct, or bringing damages or dishonor to the society. To so interpret the words of the article of the by-laws, would be unreasonable.

Radice vs. Italian-American Christopher Columbus Society, 67 N. J. Law, 197; 50 At. Reporter, 691. 20

In the case of Radice vs. Italian-American Christopher Columbus Society, a benefit society, members were expelled on account of the loss of a case against the society, which case they were appointed to look after on behalf of the society, and one of the members was expelled because of his alleged disorderly manner in pressing a motion for sick benefits for his brother, and his refusal to cease talking when ordered to do so. 30

The Court held that his expulsion was illegal—that the acts forbidden and for which members might be expelled from the society (the provisions of the by-laws seem to have been very similar to those under consideration in the case at bar) were where the conduct of the member impugned the honor and good name of the society—and could only refer to acts, etc., with persons outside of the society. The acts of the appellant here complained 40

of had nothing to do with bringing damages or dishonor to the society. His acts complained of were that he did strike and beat about the head and body of one Agostino Ciardino." There was no charge or statement made as to how that act against an individual could have or bring "damages or dishonor to the society." Whatever was
10 done, if anything, was against a man by the name of Agostino Ciardino, and against him only.

See also

Funeral Directors Association vs. Box, 154 Ky., 457.

POINT II.

20 **The appellant insists that he should not have been expelled from said society for the further reason that he had certain property rights which could not be confiscated.**

In the case of People ex rel. Meads vs. Alpha Lodge, &c., Reported in 13 Miscel. (N. Y.), 677; 35 N. Y. Supp., 214, Vann, J., says:

30 "The relator may have said sharp and unjust things about his associates, and his conduct in other respects may have been annoying and offensive, so that, from a purely social club, his expulsion would have been justifiable for misconduct of that nature. But a member cannot be expelled for such reasons from a business association, organized, in part at least, as a mutual insurance company, because it would be unreasonable to thus forfeit important rights of property. The forfeiture
40 would be in the nature of confiscation, and

would require express authority by statute. A by-law would not warrant it, for all by-laws must be reasonable.

* * * * * * *

The failure to pay dues, fraudulent conduct toward the Society, the conversion of its property, or any act or omission so directly affecting its welfare as to threaten its existence or success, would, of course, furnish just cause for expulsion. Perhaps other and less grave offenses might also be included, but not, according to the authorities, *the libel or slander of members,* who can seek redress in the civil tribunals, and do not need the extreme remedy of excluding the offender from all share in assets arising partly from his own contributions."

POINT III.

It is respectfully submitted that the judgment of the Supreme Court affirming the judgment of the respondent society in expelling the appellant as a member from said society be reversed, and the resolution of the respondent society expelling the said appellant from membership be set aside, with costs to the appellant.

Respectfully submitted,

A. ORESTES CICCARELLI,
Attorney of and of Counsel with Appellant.

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