

Vibhudapriya Thirtha Swamiar - - - - - *Appellant*

v.

Lakshmindra Thirtha Swamiar - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 21ST MARCH, 1927.

Present at the Hearing :

LORD PHILLIMORE.

LORD CARSON.

LORD DARLING.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

The appellant in this case is the Matadhipathi or superior of the Admar Mutt at Udipi in the South Kanara District, and he sues the defendant, the present Matadhipathi of another institution called the Sirur Mutt (in the same town) for certain monies which he alleges are due to him by the defendant's predecessor in office. The defendant is a minor and defends this action by his father as guardian.

The plaintiff alleges that the predecessor of the defendant borrowed the money for the purposes of the Mutt, and the transactions ranged over a long period from 1902 until about the time of his death in 1916; that a settlement of account was arrived at on the 14th August in that year and an acknowledgment was signed by the deceased Matadhipathi (Exh. C. on the record).

The Sirur Matadhipathi died on the 27th September, 1916, and the plaintiff brought his suit against his successor on the 14th August, 1919. It should be mentioned that as the deceased Matadhipathi had made no nomination in his lifetime the superior of the connected Sodi Mutt appointed the defendant as his successor.

The plaintiff's claim was denied on behalf of the defendant ; the acknowledgment (Exh. C.) was charged to be a forgery, and it was further contended that even if the debts were genuine the assets of the Mutt were not liable for the money borrowed by the deceased Swami.

The case went to trial before the Subordinate Judge of South Kanara who held that the impugned transactions were true, and that Exh. C. was genuine, and that the debts were contracted by the deceased Matadhipathi for legitimate purposes, and that the Mutt assets were liable for their satisfaction. He accordingly decreed the plaintiff's claim.

From his decree there was an appeal to the High Court of Madras, which differing from the trial Judge dismissed the plaintiff's suit, in so far as it sought to make the assets of the Mutt answerable for the debt. The learned Judges held in substance that the plaintiff had failed to show that the debts for which the suit was brought were contracted for necessary purposes and that consequently the Mutt was not liable. They, however, decreed the claim in regard to the personal assets of the deceased that had come into the defendant's hand.

The plaintiff has appealed from the decree of the High Court to His Majesty in Council and the main question for decision is with regard to the liability of the Mutt assets for the satisfaction of his debt.

It is in evidence that in the town of Udipi there are eight Mutts each presided over by a superior or *swamiar*. They appear to form 4 groups connected by a tie which permits in case of the superior of one Mutt dying without nominating a successor the superior of the other Mutt to *appoint* a successor to the deceased *swamiar*.

Besides these Mutts there is a temple dedicated to Krishna, one of the manifestations of Vishnu, perhaps the most popular deity forming the Hindu Triad. Admittedly it has no superior but the affairs of the Krishna-temple are managed by the superiors of the eight Mutts in turn.

The important ceremonies connected with the temple of Krishna are performed during the *Pariyaya* which lasts from the 15th January in one year to the middle of January two years later. During this period the superior of the Mutt whose turn it is, usually called the *Pariyaya Swami*, has absolute power over the performance of the rites and ceremonies.

The South Kanara Manual, published under the authority of Government, contains the following description regarding these Mutts :

“ The Temple of Krishna, at Udipi, is said to have been founded by Madhavacharya himself who set up in it the image of Krishna originally made by Arjuna and miraculously obtained from a vessel wrecked on the coast of Tuluva . . . Besides the temple at Udipi he established eight ‘ Mathas ’ or sacred houses, each presided over by a *sanyasi* or *swami*. These exist to this day and each *swami* in turn presides over the temple of Krishna for a period of two years and spends the intervening fourteen years

touring throughout Canara and the adjacent parts of Mysore levying contributions from the faithful for the expenses of his next two years of office, which are very heavy as he has to defray not only the expenses of the public worship and of the temple and Matha establishments, but must also feed every Brahmin who comes to the place."

Madhavacharya, who was born in the 12th century of the Christian era, is credited with introducing vai hnavism cult or the Krishna cult in Southern India.

The evidence in this case fully accords with the description in the Manual.

The plaintiff in support of his claim examined besides himself a number of witnesses on whom the Subordinate Judge relied. Among them is an old servant of the Sirur Mutt who had been in service for 25 to 30 years. He speaks to the rebuilding of the Dining Hall which had become dilapidated and to the expenses connected with the *Pariyaya*.

Another witness is the superior of one of the other Mutts in Udipi, Sudindra Thirtha, who speaks as follows :

" I am one of the *Swamis* of the eight Mutts at Udipi. There is a custom that these eight Mutts should perform *Pariyaya* in the Shri Krishna Mutt The *Swami* of each of the eight Mutts should perform *Pariyaya* for a period according to turn. The said custom of performing *Pariyaya* prevails from the days of Madhwachariya. Provisions have to be kept ready for the *Pariyaya*. Rice has to be stored. This storing commences from about a year before the *Pariyaya*."

After stating the quantities of provisions to be stored for the festival he describes in the following terms the expenses he himself incurred whilst he was in charge of the *Pariyaya*.

" I have performed two *Pariyayas*. My second *Pariyaya* was from 17th January, 1912, to 16th January, 1914. I have incurred a debt of Rs. 30,000 during the said *Pariyaya* period. It was a debt contracted to conduct the *Pariyaya*. The *Pariyaya* of the Sirur Mutt commences after the *Pariyaya* of my Mutt is over. A debt of Rs. 25,000 was contracted during my first *Pariyaya*. I know Lakshmi Samudra Thirtha Swami (the deceased superior) was not extravagant but was very frugal in expenditure. My Mutt has an income of about Rs. 10,000 per annum excluding assessment. The Mutt of Krishna has an annual income of about 500 muras of rice and Rs. 500 in cash from lands. Besides this it gets a total *tasdick* of Rs. 13,000 per annum from the British Government and Mysore State. The *Swami* of the *Pariyaya* Mutt has to meet the rest of the expenditure either from the accumulations of the income already made or by borrowing funds. During the *Pariyaya* period of 2 years offerings by devotees or pilgrims may amount to Rs. 25,000. But Rs. 12,000 have to be spent out of it for making presents to them. It is not possible to meet the expenditure of the *Pariyaya* period from the income of the above-mentioned Mutt of Shri Krishna, *i.e.*, *tasdick* income from lands, and offerings from devotees and pilgrims. At the *Pariyaya* festival about 10,000 persons are fed per day."

The plaintiff himself, who is the superior of the Admar Mutt, speaks thus of the heavy expenses incurred in performing the worship and the attendant ceremonies :—

" The aforesaid sums were borrowed by the late Sirur Swami for the expenses of his *Pariyaya*. Udipi Krishna temple has lands and also gets *tasdick* and these are got by the *Pariyaya* Swami for the time being. Those
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incomes are not sufficient for the expenses of the *Pariyaya*. The *Pariyaya* Swami also gets *kanikas* (offerings or presents) from votaries and pilgrims during the *Pariyaya* period. The income of the Mutt of the *Pariyaya* Swami is also utilised for the *Pariyaya* expenses. All these incomes are not sufficient to meet the expenses of the *Pariyaya*. The *Pariyaya* Swami before his turn of *Pariyaya* commences has to store articles, viz., rice, firewood and other provisions and also to grow plantain plantations. For all these the income of the Krishna temple is not available. I have heard that Sirur Mutt has an income of about Rs. 16,000 a year. As the income of the Sirur Mutt and that of the Krishna temple and also the offerings of the votaries were not sufficient for the *Pariyaya* expenses, the late Sirur Swami had to incur debts. The Bhojanasala (Dining Hall) constructed by the late Sirur Swami would cost about Rs. 20,000."

In the Manual there is a further reference to the *Pariyaya* :—

"The periodical change of the Swami presiding over the temple of Krishna is the occasion of a great festival known as the *Pariyaya* when Udipi is filled to overflowing by a large concourse of Madhvas not only from the district but from more distant parts, especially from the Mysore territory."

Mr. Justice Krishnan in his judgment in the case remarks :—

"there are no doubt certain poojas and ceremonies which have necessarily to be performed and any reasonable expenditure incurred for carrying them out will be binding on the Mutt. But there is no obligation to have the ceremonies performed on the scale that the Sirur Swami did."

It is admitted that no scale of expenditure is fixed for the performance of the ceremonies beyond recognised custom and usage. They have to be performed according to the practice which has prevailed for centuries. The Dining Hall was falling to pieces, and the Government appears to have intimated to the superior that unless it was rebuilt and put in proper order its contribution would be withdrawn. It is in evidence that in executing the necessary repairs considerable cost was incurred. It can hardly be said that the expenditure for these purposes was not legitimate.

According to Mr. Justice Ramesam, the second Judge, the necessity for the debt in order to bind the *Mutt* must be "justifiable." He says :—

"It is idle to pretend that the feeding could have gone on anything like this scale in all the six centuries during which these Mutts existed or even in the earlier years of the last century."

Referring to the case of *Palaniappa Chetty v. Sreemath Deraskhamony Pandara Sannadhi* (44 I.A. 147), the learned Judge observes :—

"It would be an instance of the misapplication of the word 'custom' and of forgetfulness of essentials of a custom which modifies the ordinary law to say that the Mutts are bound by custom to feed every Brahmin that comes to the *Pariyaya* (as is stated in the South Kanara Manual). The numbers may increase as the years roll on and the result of carrying out the idea of feeding every one that comes may be the destruction of the institutions themselves. The Swamis have a wide power over their income and Courts do not ordinarily scrutinise their manner of exercising it so long as they do not seek to bind their successors. If a successor is sought to be bound the borrowing must be for justifiable necessity."

The learned Judge seems to have misapprehended the effect of their Lordship's judgment in *Palaniappa Chetty's Case*. In

that case one head of a Mutt had purported to alienate in perpetuity certain lands of the institution; and the impugned alienation was attempted to be supported by an alleged custom. The remarks of the Board relate to this contention; they lay down no general rule.

He seems also to have overlooked the fact that the facilities for travelling afforded by the present conditions of the country materially account for the larger influx of pilgrims and worshippers, without imputing blame or dereliction of duty to the *Swami*. As pointed out in the case of *Vidya Varuthi Thirtha v. Balusami Ayyar* (L.R. 48, I.A., p. 302), these superiors "have ample discretion in the application of the funds of the Mutts, but always subject to certain obligations and duties equally governed by custom or usage." In the South Kanara Manual also, there is an account of the vast concourse that flocks to the temple of Krishna on the recurring *Pariyaya* and the duty sanctioned by ancient practice, which rests on the superior in charge.

These Matadhipathis have a difficult task to perform; unaided by any established rule they are expected to exercise control over the numbers of pilgrims, who come to the temple in order to participate in the festivals and share in the food offerings. Even if it were permissible for the superior to exclude a certain number from being fed, their Lordships doubt whether popular sentiment would sanction his so doing. The obligations under which they labour are regulated by custom, which are of long standing and have been observed for centuries.

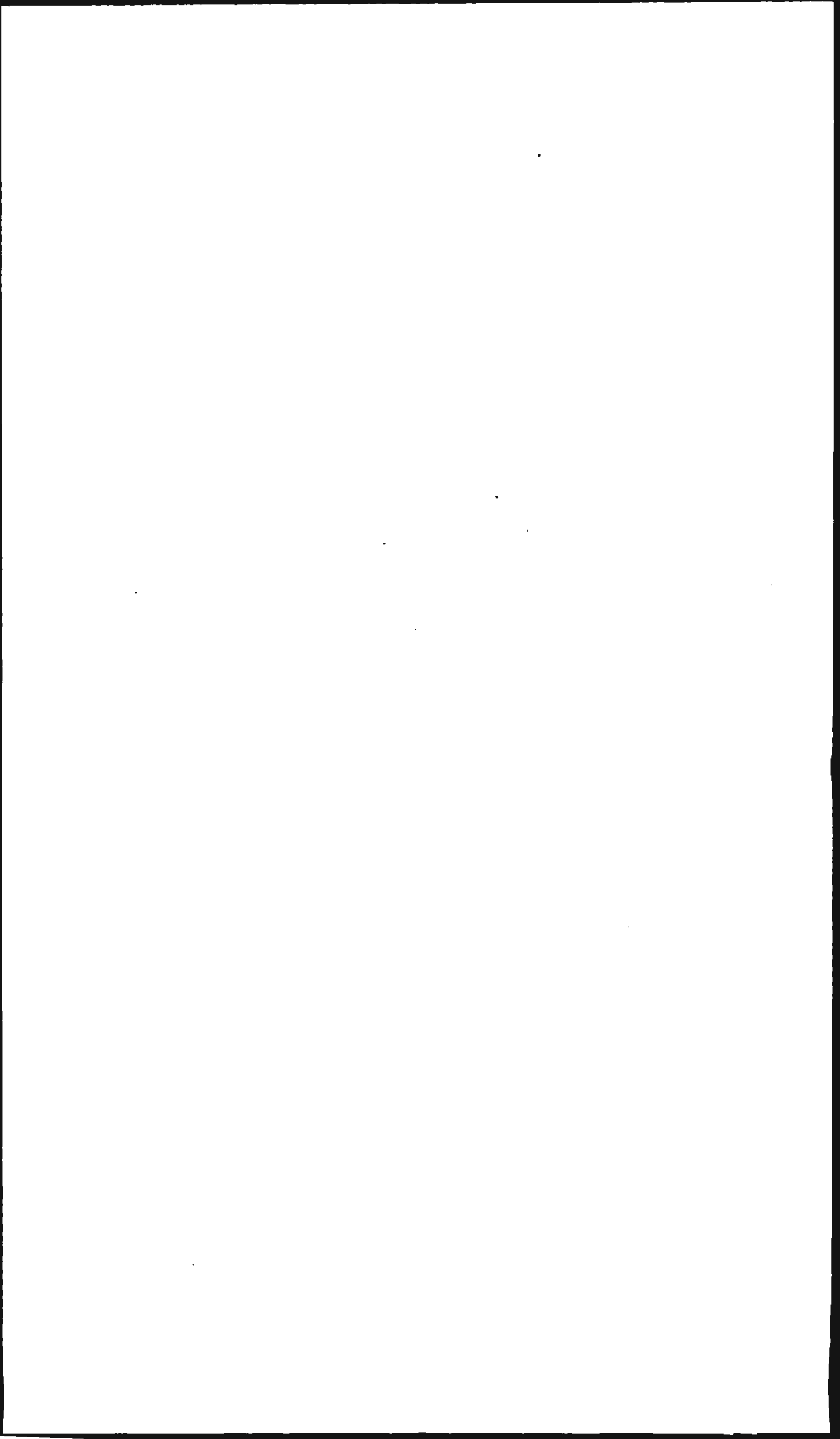
What their Lordships have to see in this case is, firstly, whether the debts were contracted by the deceased *Swami* for his own purposes or for the purposes of the Temple and in discharge of the duties under which he lay in the performance of the worship and the feeding of pilgrims; and, secondly, whether the monies so borrowed were legitimately applied for those purposes.

In *Niladri Sahu v. Chaturbhuj Das* (L.R. 53, I.A., p. 253), the superior of a Mutt desirous of improving the houses for the lodgment of Rajahs and other rich devotees who visited his Mutt for the purpose of worship, built fitting habitations for them and attached the same to his institution. It was found that the revenue of the Mutt, although sufficient to meet the ordinary expenses of the worship, was insufficient to defray the cost of the construction, maintenance and management of these new buildings.

The superior accordingly began to borrow, from time to time, from moneylenders various sums of money to pay for these constructions. It was also found that the borrowed money was applied partly to the performance of the necessary worship; and that the Mutt was making use of the buildings constructed by the superior. The Board directed the appointment of a receiver in respect of the usufruct, which ordinarily went to the superior to apply the same for the payment of the debts contracted by him.

Their Lordships think that the proper course to take in the present case should be the same, viz. : to remit the case to the High Court, to send it down to the Subordinate Judge with the following directions: that in case the guardian of the defendant does not pay within three months from the arrival of the record the sum sued for, plus interest at the contractual rate until payment, the Trial Court should appoint a receiver for the rents and issues of the Mutt property and the proceeds from offerings, etc., and after payment of all expenses connected with the Mutt and the performance of the ceremonies and festivals and a reasonable provision for the maintenance of the Matadhipathi, the balance should be applied in discharge of the plaintiff's debt until such debt has been paid off. The order of the High Court will be discharged.

The appellant is entitled to his costs in all the Courts, and their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

VIBHUDAPRIYA THIRTHA SWAMIAR

vs.

LAKSHMINDRA THIRTHA SWAMIAR.

DELIVERED BY MR. AMEER ALI.

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