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He said that the demand letter of 16th January, 2003 was after the release of the engine although the engine was released on 20th February, 2003. It clearly creates an impression that both the 1st Defendant and the 2nd Defendant were anticipating continued claim by the Plaintiff as the 1st Defendant had already noted that the matters was "hot". (See Blacks Law Dictionary Centenal edn 1891 - 1991). Corley, Peter J. On the 3rd of January, 2003 the Malawi Revenue Authority issued a Release Note for the 1st Defendant to release the engine to the Plaintiff. Ngauma at a Travel Agent's Office in Kosovo and leave the engine there. When the said container arrived in Malawi all the personal effects of 19 Police Officers were cleared with Malawi Revenue Authority by the Office of the Police Inspector General. The Release Order does not name Mr. Pike Mphaka as the one to whom the engine be released. Mr. Mphaka was the one in whose name goods were left with the shipper and shipping documents reflected his name. The Plaintiff then cleared the engine with Malawi Revenue Authority and on 3rd January, 2003 obtained a customs Release Order. In the case at hand when the 2nd Defendant informed the 1st Defendant in the presence of the Plaintiff that the engine which the 1st Defendant was holding belonged to the Plaintiff contrary to what the bill of lading said, that in my view constituted sufficient notice to the 1st Defendant that title in the engine in fact rested in the Plaintiff. I award the Plaintiff that sum. For more information, see About BAILII. When the Plaintiff cleared the engine with Malawi Revenue Authority where he obtained a release order and returned to the 1st Defendant to have the engine released to him they gave him yet another reason why they could not release it. All items in the container were in the names of 18 other Police Officers. We therefore reject this claim for reasons listed above." The inconsistency continued in the defence evidence when they said that by the time they released the engine to the 2nd Defendant on 20th February, 2003 they were unaware of the claim by the Plaintiff for the same engine. It is admitted by the 1st Defendant that twice they refused to release the engine to the Plaintiff when he approached them. According to him MANICA was not supposed to release the engine to Mr. Mphaka because all the clearance formalities were done by him and the release note was issued in his name. The market value of the Mercedes Benz engine is not to be found in the evidence. Nonetheless they needed a bill of lading to release it. 1st Defendant preferred to release to one with bill of lading, as he then was, put it clearly in Chiwaya v Sedom [1991] 14 MLR 47 at 55 in the following terms: "Next I turn to the claim for damages for trespass to goods. He paid all dues to MRA and he was issued with a release note. The statement shows that the Plaintiff is Lieutenant Colonel in the Malawi Defence Force at the material time based at Salima but now at Mvera Support Battalion. He is aware that the engine was released to Mr. Mphaka. I find that the Plaintiff has proved his claim against both 1st Defendant and 2nd Defendant on a balance of probabilities. The following morning he went to MANICA and met one Charles Katola to whom he presented the documents for the released of the engine. In the absence of the market price, damages are as measured by the cost of replacement of the goods converted (SeeChiwaya v Sedom (Supra)). J and E Hall Ltd v Barclay [1937] 3 ALL ER 620). He returned to Malawi in July, 2002 and he was told in December, 2002 that the goods had arrived for which he had to pay duty and also 100 US\$ as his contribution to the transportation. I hold that 1st Defendant liable for wrongfully refusing to release the engine to the Plaintiff and for wrongfully releasing it to the 2nd Defendant. His claim is for delivery of the engine or the value thereof, damages for loss of use and costs of the action. In addition, the 1st Defendant were shown all Customs clearing documents including a release note in the name of the Plaintiff. Mr. Mphaka only asked him to contribute US\$100. There is overwhelming and unchallenged evidence against the 2nd Defendant for wrongfully taking the Plaintiff's engine and converting it by selling it without the authority of the Plaintiff. That a third party may lay claim to property in the possession of the bailee was recognized in the cases of Henderson & Co. v Williams (1895) 1 QB 521, Ramson v Platt (1911) 2 KB and Wilson v Anderson (1830) 1 B & Ad 450. It is to be observed that at this point in time the 2nd Defendant had already told the 1st Defendants in the Presence of the Plaintiff that the engine in fact belonged to the Plaintiff although the bill of lading may have had the name of the 2nd Defendant. There is no defence for the 2nd Defendant although he did file acknowledgement of service of Writ of Summons indicating that he intended to contest the proceedings. In short bailment is an agreement whereby possession of personal property is surrendered by the owner with provision for its return at a later time. Holmes 1986 P. No. R 1020140003 was shipped in one container from Kosovo to Malawi together with personal effects of 19 Police Officers who had been on a UN Peace Keeping Mission to Kosovo. He requested that the notice be in his name and this was done. There is also unchallenged evidence that the Plaintiff arranged with the 2nd Defendant, who was the Commandant for the Malawi Police Contingent in Kosovo, that the engine be included in the container of Police Contingent personal effects and be transported to Malawi again for the Plaintiff's benefit. It was not possible for ownership in their warehouse to be transferred to another. By an agreement between the Plaintiff and the 2nd Defendant made sometime in 2002 in Kosovo while both were on duty, the 2nd Defendant agreed to ship to Malawi the Plaintiff's Mercedes Benz Engine No. R 1020140003 in a container carrying personal effects of other Police Officers. He however said that by telling them that the engine belonged to the Plaintiff, the 2nd Defendant was not disclaiming the engine. On 3rd January, 2003 he went to Zomba from where he travelled with Mr. Mphaka to Blantyre, Malawi Revenue Authority Offices. He said that he never dealt with the Plaintiff personally but the information was only passed to him. The 2nd Defendant wrote a note acknowledging having collected the engine. An instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. This was further confirmed by the Plaintiff himself when he laid claim to it and produced custom clearing documents supporting his claim to title to the engine. Observably, the Plaintiff pleaded conversion in the alternative. The engine was released upon Mr. D. On 20th February, 2003 the 2nd Defendant took delivery to the said engine. Thus a bill of lading may be negotiable or nonnegotiable. He knew that the engine was seized by Customs and it overstayd without being cleared. Mr. Katola said MANICA would not release the engine because it was left as Security for a bill which had been left by Mr. Mphaka and his colleagues. He was never told that there was anything outstanding. The amount of care demanded of a bailee varies with nature and value of the article bailed. 465). A Release Order mandates an agent holding the goods to release to the person who has cleared the goods but above all if it is a container bill of lading has to be surrendered or the one who handed over the bill of lading is entitled. I am of the view that in the absence of proof of the actual value of the engine at the time of conversion, I attached to it the sum of K450,000.00 as the value of the engine at the time of conversion as an amount I consider reasonable. The 1st Defendant denied that it was keeping the said engine as alleged or at all. The following day he was told that the engine had been loaded in a container. This is contrary to what is clearly a rejection of the claim in their letter of 27th January, 2003. There are some shipments which do not require a bill of lading. With this, I therefore, take full responsibility for any legal action or otherwise as a result of the release of the engine and hereby indemnify Manica Malawi for any claim, Civil or otherwise legal action. Respectfully Pike Mphaka (Signed)" It would appear that the 1st Defendant demanded this letter. It is possible for a consignee to use an agent to collect goods. I however grant the Plaintiff costs of these proceedings. PRONOUNCED in Open Court this 22nd day of July, 2009 at Lilongwe. I am unable to make an award for loss of use. The engine was not a personal effect and they did not know who the owner was. This is subject however to the qualification that the damages must not be too remote, that is, they must be such damages as flow directly and in the usual course of things from the loss or damage." Unyolo, J. He also confirmed that there was a time when Mr. Mphaka went to 1st Defendant on his own and demanded the engine and he was refused. It transpired that the Plaintiff, not the 2nd Defendant, went to MRA and cleared the engine and was issued with Customs Release Order. According to the 1st Defendant's own defence statement in paragraph 4 (c) they pleaded that: "When the Plaintiff came to the 1st Defendant's Offices to claim the said engine the 1st Defendant's servant or agent advised the Plaintiff that the said engine was uncleared with Malawi Revenue Authority, so the 1st Defendant could not release it." It is clear from the 1st Defendant's defence that the first reason 1st Defendants gave why the engine would not be released to the Plaintiff was that it had not been cleared with Malawi Revenue Authority. The bill of lading showed that once shipper was UNMIK HQ, Pristina Serbia and the Consignee as Manica Malawi. The 2nd defendant is the one who collected from the 1st Defendant the Personal effects of the 19 police officers after he had presented the bill of lading in respect of the goods. They have based their insistence on the argument that the bill of lading in respect of the engine was in the name of the 2nd Defendant and not the Plaintiff. Yet they released the engine to 2nd Defendant when he only fulfilled one condition of bill of lading, although as I have already observed 2nd Defendant verbally transferred whatever title the bill of lading evidenced to the Plaintiff, who by all accounts had a better title than the 2nd Defendant. In the present case the 1st Defendant has insisted that they could not release the engine to the Plaintiff who was clearly the general owner in preference of the 2nd Defendant who was clearly, special owner, an owner only for the purposes of shipment. Hundley Annotate this Case High Court General Division IN THE HIGH COURT OF MALAWI LILONGWE DISTRICT REGISTRY CIVIL CAUSE NO. As a matter of fact the bill of lading was not in the name of the 2nd Defendant. On the day of release Mr. Mphaka sorted out the bill he owed 1st Defendant but if the bill is not sorted out it depended on what they agreed. After checking the luggage of the 21 Police Officers he telephoned the Plaintiff telling him that he should meet Mrs. There is also uncontroverted evidence that when the container arrived in Malawi the Malawi Police cleared only the Personal effects of the 19 police officers leaving out the Plaintiff's engine. Now delivery of goods or personal property by a bailor to a bailee, in trust for the execution of a special object upon or in relation to such goods, beneficial either to the bailor or bailee or both, and upon a contract, express or implied to perform the trust or carry out such trust, and there upon either re-deliver the goods to the bailor or otherwise dispose of the same in conformity with the purpose of the trust is what is called bailment. At that point the 1st Defendant must have realized that there was a third party claim to the engine which was supported by the bailor himself. Justia > US Law > Case Law > Kansas Case Law > Kansas Court of Appeals Decisions > 2017 > Moulden v. A bailee has a duty to exercise due care in respect of the property bailed. The 1st Defendant's evidence shows that they refused to release the engine to the Plaintiff first because it had not been cleared and second because the bill of lading was in the 2nd Defendant's name. The Plaintiff who was his only witness adopted his written statement. Now a bill of lading is a document evidencing receipt of goods for shipment. Again the 1st Defendant's evidence shows that released could only be where there had been customs clearance and bill of lading. I must now turn to damages. Although the document is faint it appears that K128,000.00 was paid to Malawi Revenue Authority clearing the engine. The 1st Defendant concede that the 2nd Defendant told them that the owner of the engine was the Plaintiff, well before they released the engine to the 2nd Defendant. At time of the release they did not know that there was an issue involving the engine. He produced the Seizure Notice, the Release Note and a receipt for compilation of duty, all in his name. This insistence is surprising in that the 2nd Defendant personally informed 1st Defendant that the owner of the engine, was the Plaintiff at the time both him and the Plaintiff visited the offices of the 1st Defendant. He said declaring of goods to Customs has to do with ownership but release did not have to do with ownership. The bill of lading in question did not indicate an engine. This was yet another attempt to escape liability on the part of 1st Defendants for their having wrongfully released the engine to 2nd Defendant when they clearly knew that the Plaintiff had the better title to the engine. I fully agree and subscribe to the sentiments of Lord Denning MR in Building and Civil Engineering Holiday Scheme Management Ltd v Post Office [1965] 1 ALL ER 163 at 168 when he said: "At Common Law in the case of bailment, the general principle is that of restitutio in integrum, which means that the party damnified is entitled to such a sum of money as will put him in as good position as if the goods had not been lost or damaged. (See Principles of Business Law 13 edn Robert N. The proceedings are contested. From the evidence already referred to, it is clear that the trespass in this case was accompanied by actual deprivation of possession so that a case of conversion is indeed made out on the facts. The said engine which belonged to the Plaintiff, an officer of the Malawi Army was left uncleared and the 1st Defendant denies that it held the said engine as Security for clearing charges. 2ND RESPONDENT CORAM : HON. 1st RESPONDENT PIKE MPHAKA I hold that that refusal was wrongful. That reason is in Paragraph 5 (a) of the 1st Defendant's defence and it is that: "the 1st Defendants declined to release the said engine to the Plaintiff and advised him to ask the 2nd Defendant to come to the 1st Defendant's premises and take delivery of the said engine because under the shipping document only the 2nd Defendant was entitled to claim the shipped goods." The shipping document the 1st Defendants referred to was the bill of lading which they said was in the name of the 2nd Defendant. The shipment was treated as a writ. That was when the Plaintiff

with MRA and that therefore the 1st Defendant could not release it. This was also despite the fact that all documents from Malawi Revenue Authority which the Plaintiff showed the 1st Defendants were in the name of the Plaintiff, that is to say notice of seizure, Release Note and Receipt from Malawi Revenue Authority in payment of the clearing charges. It is clear both defendants were aware that they had engaged themselves in wrongful conduct against the Plaintiff which would have legal consequences. Albert was General Manager of MANICA at the time and the matter was referred to him when they saw that it was hot. 103 OF 2003 BETWEEN K.O. MWANGUPIRI

Mr. D. Then the 1st Defendant received a demand letter dated 16th January, 2003 from the Plaintiff's Legal Practitioners demanding that the 1st Defendant do release the engine to the Plaintiff. APPELLANT AND MANICA (MALAWI) LIMITED. I am of the view that it is good law to say that if a bailee stands on the bailor's title and refuses a third party's demand without the bailee having interpleaded, that would amount to wrongful detention against the third party who has a better title. He confirmed that at that point the 1st Defendant had knowledge that the engine belonged to the Plaintiff. The container shipped to Malawi with the 1st Defendant as consignee for the account of Malawi Police. He did not know that Mr. Mphaka had pledged the engine with MANICA. Indeed the 1st Defendant was well aware of the dual claim of title to the engine and that is why they described as a "hot matter to be referred to management." Then the engine was released to 2nd Defendant, not on the basis of satisfying the two conditions 1st Defendant had set but merely "upon Mr. D. At MRA Offices the Plaintiff discovered that there had been a notice of seizure in respect of the engine but such notice was in the name of Mr. Mphaka. The only document that may be of assistance is Ex M 3 receipt for the duty paid on consignment for which a bill of entry is not required. During cross-examination he said that the 1st Defendant did not try to enquire why Mr. Mphaka took a long time to collect the engine. A contract for the carriage of goods constitutes a mutual benefit bailment, but the care required of the carrier greatly exceeds that of the ordinary bailee. BAILII also thanks Sentral for provision of servers and Bytemark for provision of hosting services. None of them indicates the value of the engine at the time of purchase. It is conceded that a Mercedes Benz engine, Albert's instruction. Mr. Mphaka had told them that he was going to do the declaration of the engine later. Shedd, and Eric M. It is extremely difficult to calculate damages for loss of use in those circumstances. It is admitted that Malawi Revenue Authority placed a notice of seizure against the engine and the notice was originally in the name of the 2nd Defendant. All the pieces the Police brought were duty free. I therefore, take full responsibility as to any claim that may be made by any person. The parties to this case agree that this is a case of bailment. When the Plaintiff went to the Offices of the 1st Defendant to claim the said engine the 1st Defendant's servant or agent advised the Plaintiff that the said engine was uncleared with Malawi Revenue Authority, so the 1st Defendant could not release it. The bailee would in those circumstances be liable if it turns out that the third party has a better title to the property. This the 1st Defendant became aware of well before they released the engine to the 2nd Defendant. However, when he presented the Release Order to the 1st Defendant and sought delivery of the engine, the 1st Defendant refused to release the engine to him on the ground that the shipping documents including the bill of lading were not in his name and that the 1st Defendant could only release the engine to a person who was in possession of shipping documents. The 1st Defendant nonetheless declined to release the said engine to the Plaintiff and advised him to ask the 2nd Defendant to come to the 1st Defendant's premises and take delivery of the said engine because under the shipping documents only the 2nd Defendant was entitled to claim the shipped goods. In May, 2002, Mr. Mphaka informed him that they would transport their properties to Malawi using a hired container to be paid by the United Nations. In the present case the 2nd Defendant can properly be described as the bailor in all the circumstances while the 1st Defendant was the bailee of the engine. It shows that both were required as they could not release when one of the conditions was not fulfilled. That statement shows he, Mr. Anthony Chawinga, is Imports Manager for the 1st Defendant. The 1st Defendant is a forwarding and clearing agent and the 2nd Defendant is employed in the Malawi Police Service and was at the material time In-Charge of Malawi Police Peace keeping contingent in Kosovo. Indeed in Paragraph 3 (c) of the 1st Defendant's defence it is stated that: "The defendant pleads that the said engine, which belonged to the Plaintiff, who was an Officer of the Malawi Army was left uncleared, the 1st Defendant denies that it held the said engine as security for clearing." Clearly the 1st Defendant knew that title in the engine vested in the Plaintiff even before it released it to the 2nd Defendant. It may be negotiable or nonnegotiable. Mr. Mphaka had told 1st Defendant that the engine belonged to the Plaintiff at the time he saw that the engine was being seized by Customs. I have examined the documentation in evidence. The Plaintiff approached the 2nd Defendant and the parties entered into another agreement where the 2nd Defendant disclaimed the said engine and the Plaintiff then did all the clearing formalities on his own. The letter reads in part that:"Dear Sir, The engine that was held by Manica has now been collected by me. Upon arrival in Malawi the Plaintiff discovered that all the personal effects belonging to the other police officers had been taken by the owners and that the 1st Defendant was keeping the engine as Security for the clearing charges. Mr. Mphaka sold the engine to one sergeant Kachingwe. This court has persistently followed the law laid down in General and Finance Facilities Ltd v Cook's Cars (Romfold) Ltd [1963] 2 ALL ER 314 where it was held that damages in an action for conversion is for a lump sum of which the measure is generally the value of the chattel at the date of the conversion, together with any consequential damage flowing from the conversion and not too remote to be recoverable in law." I would apply these principles in the present case. The 1st Defendant advised the Plaintiff to ask the 2nd Defendant to come and claim the engine because under the shipping documents it was the 2nd Defendant who was entitled to claim delivery of the shipped goods, including the engine. Albert's instructions on 20/02/2003." This was wrongful release of the engine. In January, 2001 he was deployed to Kosovo as a Military Liaison Officer where he met Mr. Pike Mphaka then in-charge of the Malawi Police Peace Keeping Contingents. The Shipper was United Nations Mission in Kosovo, Malawi Police contingent and the consignee was Manica Malawi. Ex AC 10 therefore is of no consequence and has no effect on the Plaintiff's claim against the 1st Defendants in all the circumstances. Towards the end of the year, 2002 the 1st Defendant received a shipment of one container said to contain 190 pieces of personal effects sent to the 1st Defendant as consignee/clearing and forwarding agent for the account of the Malawi Police. Again the law is that the value of the goods is to be taken as the market price at the time of conversion. After that the 2nd Defendant came again to the 1st Defendant to claim the engine. Indeed the notice of seizure was changed by Malawi Revenue Authority from the name of the 2nd Defendant to that of the Plaintiff at the instance of both the 2nd Defendant and the Plaintiff. What the witness said viva voce was a repeat of what he said in the statement he adopted. Mr. Mphaka became uncooperative and crafty. The necessity of it is unclear when it was the managing director who gave instructions for the release of the engine. When the Plaintiff approached 1st Defendant he was advised to bring the 2nd Defendant. There is no evidence to show that the engine could be used on the condition in which it was. It may be issued by a bailee or directed to a bailee and it covers goods in the bailee's possession. The only defence witness adopted his statement. The present matter being a civil matter the duty placed on the Plaintiff is to prove the claim on a balance of probabilities. A bailor/bailee relationship therefore can be for the benefit of a third party designated by the bailor. All the personal effects of the 19 Police Officers were cleared with Malawi Revenue Authority (MRA) by the Office of the Inspector General of Police except a Mercedes Benz engine. He obliged and returned to Blantyre. During cross-examination he said that he was very surprised that MANICA demanded money. On 20th February, 2003, the 2nd Defendant called at the 1st Defendant and collected the engine. From MRA Offices the Plaintiff and Mr. Mphaka were to go to the 1st Defendant to collect the engine, but Mr. Mphaka insisted that the Plaintiff escort him to Zomba where he was urgently required. JUSTICE MZIKAMANDA Counsel for the Appellant Mr. Dossi, Counsel for the Defendant Mr. Gonaullni - Court Interpreter JUDGMENT The Plaintiff commenced the present action against the Defendants by way of a specially endorsed writ claiming the delivery of Mercedes Benz engine No. R 1020140003 which had been wrongfully detained by the first Defendant, damages for loss of use and K15,000.00 costs. The customs declaration was made by the 2nd Defendant who was the Contingent Commander of the Malawi Police Contingent attached to UNMIK in Kosovo. It was in the name of UNMIK Civil Malawi Police (See Exhibit A C 6 of the defendants). The engine was kept as lien but it was also not cleared. Yet when the Plaintiff cleared the engine and when 2nd Defendant told 1st Defendant that title to the engine in fact rested with the Plaintiff the 1st Defendant still refused to release the engine to the Plaintiff. According to the statement of claim, the Plaintiff was at all material times employed in the military service and was based at Salima Military Wing. The cases that the Plaintiff counsel cited awarding damages for loss of use relate to cars that were converted. The 1st Defendant was well aware that it was the Plaintiff who subsequently cleared the engine with Malawi Revenue Authority and that Malawi Revenue Authority issued a Customs Release Note in respect of the engine in the name of the Plaintiff. The bill of lading in the present case is marked "BL not negotiable unless consigned to order." The Transferring of a document of title goes with the shifting of rights from the transferor to the transferee. He claimed delivery of the engine to the Plaintiff, damages for loss of use of the engine and costs of the action. Whether a bill of lading is negotiable or nonnegotiable it can be transferred although their methods of transfer may differ. It is receipt for goods, contract for their carriage and is documentary evidence of title to goods." A document of title is a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. In paragraph 3 (c) of the 1st Defendant's defence statement it is stated that: "... the 1st Defendant denies that they held the said engine as security for clearing charges." Yet in their letter to the Plaintiff's lawyers dated 27th January, 2003 they gave as one of the reasons for rejecting the Plaintiff's claim that: "Secondly the following amount is still outstanding in our book as Malawi Police is treated as a COD (Cash on Delivery client..... There is unchallenged evidence that the engine was bought in Kosovo by the Plaintiff for himself. At MRA Mr. Mphaka disclaimed the engine. The statement of defence for the 1st Defendant shows that it admits that it did receive as a receiving agent the said container in which the said engine was contained as one of the shipped items. Neither was it pleaded, British and Irish Legal Information Institute Access to Freely Available British and Irish Public Legal Information - DONATE to keep BAILII running - Major Donors Welcome to BAILII, based at the Institute of Advanced Legal Studies, where you can find British and Irish case law & legislation, European Union case law, Law Commission reports, and other law-related British and Irish material. The 1st Defendant admits that the 2nd Defendant told them that the engine did not belong to him, but it belonged to the Plaintiff. There is a claim for loss of use. They used to visit each other. In the present case we are dealing with a vehicle engine only. The Defendant replied to the Plaintiff's Legal Practitioner's letter by its letter dated 27th January, 2007 in effect denying liability to release the engine to the Plaintiff. The 1st Defendant however refused to release the engine to the Plaintiff. According to Blacks Law Dictionary, a bill of lading is a: "Document evidencing receipt of goods for shipment issued by a person engaged in business of transporting or forwarding goods and it includes airbill.... BAILII thanks The Scottish Council of Law Reporting for their assistance in establishing the Historic Scottish Law Reports project. The letter that the 2nd Defendant wrote to the 1st Defendant on 20-02-2003 Exhibit AC10 does not absord the 1st Defendant of liability. It is interesting that the letter was written the way it was. (See Hassan v Adani t/a Adani Garage [1993] 16 (1) MLR 116; Khundi v Attorney General Civil Cause No. 281 of 1999 (Unreported). He then asked Mr. Mphaka if there would be space in that container for him to send his Mercedes Benz engine which he had bought. It is interesting that the 1st Defendant contradict themselves on the reasons for refusal to release the engine to the Plaintiff whom they knew was the rightful owner and had better title than 2nd Defendant. The 1st Defendant did not try to find out why Plaintiff cleared the engine.

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