

## No. XLIII.

An Act for regulating the Management of the Gold Fields of New South Wales and for raising a Revenue therefrom and for the preservation of order thereon. [28th December, 1852.]

GOLD FIELDS  
MANAGEMENT.

**W**HIEREAS Her Majesty Queen Victoria has been graciously pleased to place at the disposal of the Governor and Legislative Council of New South Wales for the public service of the said Colony the Revenues to be derived from the Gold Mines and Gold Fields thereof and to authorize the said Governor and Legislative Council to determine with Her said Majesty's assent the mode of raising a Revenue from the said Gold Mines and Gold Fields and the amount of fees and royalties to be paid upon the working thereof And whereas it is expedient to make Legislative provisions in aid of Her Majesty's Royal Prerogative respecting the management of the said Gold Mines and Gold Fields and for fixing and enforcing the payment of such fees and royalties and also to make further and better provision for the preservation of order at and in the neighbourhood of such Gold Mines and Gold Fields Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows :—

1. All rules and regulations not inconsistent with the provisions of this Act heretofore made or hereafter to be made by the Governor with the advice of His Executive Council and published in the *New South Wales Government Gazette* respecting the granting of licenses to mine or dig for gold within this Colony and respecting the claims or holdings of auriferous land or other adjacent land to be allotted to or to be taken up or held by licensed persons or lessees and respecting the periods for which licenses shall be issued or leases granted and respecting license fees rents or royalties to be paid for or in relation to such licenses or leases and respecting the terms and conditions upon which licenses or leases shall be granted renewed withheld or forfeited and respecting the forfeiture thereof upon the conviction of

Preamble.

Rules and regulations of Governor and Executive Council to have the force of law.

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of any holder thereof of certain offences and respecting the transfer of any claim or holding whether held under license or lease and respecting any other matters and things which may be requisite either for carrying into more complete effect the management and working of the Gold Mines and Gold Fields of the Colony and the collection of the Revenues to be derived therefrom or for preventing abuses incident thereto shall have the force and effect of law until repealed altered or amended by any Act of Council or by subsequent rules and regulations to be made by the said Governor and Executive Council which said subsequent rules and regulations shall have the like force and effect Provided always that all such rules and regulations shall be laid before the Legislative Council within one month from the making thereof respectively if the Council be then in Session or if not then within one month next after the commencement of the then next ensuing Session of the said Council.

Rules and regulations may be made authorizing leases or licenses for terms of years.

And also authorizing auctions of single license allotments not previously taken up.

Preference given to discoverer.

Power to cancel pastoral leases extending over Gold Fields.

Compensation for improvements.

From whom licenses to be required.

2. It shall be lawful for the said Governor with the advice of the said Executive Council to make rules and regulations authorizing His Excellency to grant to British subjects only leases or licenses for mining purposes of tracts of auriferous land for terms not exceeding twenty-one years upon applications or tenders to be made with or without the offer of a premium or upon biddings at auctions to be for that purpose held and upon such terms and conditions in other respects as by such rules or regulations shall be required and also to cause to be put up to auction to the highest bidder for the purposes aforesaid in allotments to be held under single personal licenses portions of auriferous land which shall not have been claimed or taken up by licensed persons prior to notification by the Resident Commissioner of the intention to hold such auction Provided always that a preference shall in all cases be given to the discoverer of any auriferous river or tract of land who shall have communicated such discovery to the said Commissioner and established the same to his satisfaction.

3. When any Gold Mine or Gold Field shall have been discovered upon any Crown Lands then under lease or license for pastoral purposes it shall be lawful for the Governor to suspend the said lease or license so far only as may be necessary for effectually working the said Gold Mine or Gold Field and thereupon to return or remit as the case may require such portion of the rent of the lessee of the said lands as he may think reasonable and just and also to pay to him out of the Revenue derived from the Gold Mines or Gold Fields of the Colony full compensation for the loss if any sustained by him by reason of such suspension such compensation to be ascertained by valuers or an umpire appointed in the manner mentioned in section three of chapter two of Her Majesty's Order in Council of the ninth day of March one thousand eight hundred and forty-seven.

4. No person shall mine or dig for gold or shall carry on or follow any trade business calling or occupation otherwise than in connection only with pastoral or agricultural pursuits and under lawful authority in that behalf and except as hereinafter provided upon any Gold Field or shall reside upon any Gold Field then in course of being worked as such without then holding a license authorizing such person in that behalf signed by some Commissioner of Crown Lands appointed for or acting within a Gold District Provided always that this enactment shall not apply to persons holding leases or licenses on condition of paying a royalty or proportional part of the gold procured or to the officers and servants of such persons whilst working on the land in respect of which such royalty or proportional part of the gold shall be payable nor shall the same extend to women or to children under fourteen years

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years of age who shall only reside upon such Gold Field without mining or digging for gold or carrying on or following any trade business calling or occupation therein.

5. The ordinary license fee to be paid by British subjects for liberty to mine and dig for gold in any Waste Lands of the Crown shall be the sum of thirty shillings per calendar month commencing on the first day of the month for each individual person licensed payable in advance.

Amount of license fee on Crown Lands.

6. The amount of royalty to be reserved in cases where leases or licenses shall be granted to British subjects on the terms of paying a royalty in lieu of license fees shall where the said lease or license shall apply to or affect any Waste Lands of the Crown be one-tenth of the gross produce of gold procured from such lands.

Amount of royalty to be reserved.

7. In cases in which any such licenses or leases as aforesaid shall be granted for mining or digging for gold in lands belonging to private individuals under grants thereof from the Crown the fees and royalties respectively to be payable shall be one-half the amount hereby fixed in respect of licenses and leases affecting Crown Lands and no such license fee shall be demandable by the Crown from persons resident on and employed on such lands and not directly engaged in mining and digging for gold therein.

Amount of fees and royalties on private lands.

8. Persons not being subjects of the British Crown shall be liable to twice the license fees and royalties payable by British subjects and if any alien shall obtain a license otherwise than in accordance with the enactment contained in this clause such license shall be and be deemed to be and to have been void *ab initio* and the claim or holding of such person shall be forfeited and shall be assigned by the Commissioner of the district to any licensed person who may give information that the license held by such person is not in accordance herewith and such person shall be liable to be proceeded against under the provisions hereinafter contained as a person mining and digging for gold without a license Provided always that if any person reputed to be an alien shall claim the privileges of a British subject under the provisions of this Act the proof shall lie on such person that he is duly entitled to obtain the same.

Fees and royalties payable by foreigners.

9. If any person shall apply for a license as aforesaid on a day in any month after the fifteenth day thereof and it shall be shewn to the satisfaction of the Commissioner applied to for the same that such person has not during the preceding fifteen days done any act whereby he has become subject to any of the penalties by this Act imposed it shall be lawful for such Commissioner to grant such license for the then residue of the said month upon payment of fifteen shillings only.

Half license payable after the fifteenth day of any month.

10. It shall be lawful for the Governor with the advice of the Executive Council to impose a fee not exceeding twenty-five pounds on all persons who shall apply under the provisions of this Act for quartz veins and tracts of auriferous lands and the like fee upon the renewal of any such application or of any application made previous to the passing of this Act by such regulations as may from time to time be established in that behalf and every such fee shall be payable in advance at the time of lodging such application respectively but shall be returned to the person paying the same if his application shall not be granted.

Fee of £25 to be paid on application for quartz veins and like fee for renewal.

11. It shall be lawful for the Commissioner having the principal authority under the regulations of the Government in any district to permit by writing under his hand any persons to employ themselves without the payment of any license fee in cutting or making tunnels or races for the purpose of diverting water-courses or carrying away superfluous water from auriferous lands Provided that security be given for the payment of the usual royalty upon any gold that may

Commissioner may permit persons to cut tunnels races &c. without payment of license fee.

Proviso as to royalty on gold found in course of works.

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be procured in the course of such works and provided also that if any of the persons so employed shall whilst exempted from such payment under such permission as aforesaid mine or dig or work for gold otherwise than in the course of such employment and incidentally thereto such person shall be liable to twice the penalties imposed by the seventeenth section of this Act and also to the forfeitures mentioned in the eighteenth and nineteenth sections hereof.

Runaway servants  
and apprentices dis-  
qualified.

12. No such lease or license as aforesaid shall be granted to any person who shall not produce to the Commissioner to whom he shall apply for the same a certificate or other proof to the satisfaction of such Commissioner that he has been duly discharged from his last place of service if any and that he is not then under any continuing contract of hired service or apprenticeship and improperly absent from such service and if any such person shall obtain such license and it shall afterwards be ascertained that at the time of obtaining the same he was under the disqualification aforesaid such license shall thereupon be deemed and taken to be and to have been void *ab initio* and the claim or holding of such person shall be forfeited and shall be assigned by the Commissioner of the district to any licensed person who may give information of such disqualification and such disqualified person shall be liable to be proceeded against under the provisions hereinafter contained as a person mining or digging for gold without a license.

Commissioners to  
determine extent and  
position of claims.

13. The several Commissioners of Crown Lands appointed for the Gold Districts shall within their respective districts have full power to determine the extent and position of each licensed person's claim or holding of land and to mark the same.

Rights of licensed  
holder of claims  
declared.

14. Subject to the provisions of this Act and to the rules and regulations to be made by the Governor and Executive Council as aforesaid and to the terms and conditions on which any lease or license as aforesaid shall have been granted the holder of any such lease or license shall during the continuance thereof be deemed in the law to be the owner (except as against Her Majesty only) of the tract of land or claim or holding which shall be specified in such lease or license or which shall by the determination of any such Commissioner as aforesaid under the twelfth or twenty-fourth sections of this Act have been specifically allowed to such holder and during such continuance as aforesaid all gold and gold ore then being in or upon the said tract claim or holding shall except as against Her said Majesty be deemed in the law to be the chattel property of such holder.

Power to transfer  
conferred and  
regulated.

15. It shall be lawful for the holder of any tract or claim or holding of land under license to assign and transfer the same to any qualified and licensed person provided that such assignment and transfer shall be certified to the Resident Commissioner and an entry thereof made in a book to be kept for that purpose by such Commissioner for which entry the Commissioner shall be paid a fee of ten shillings on behalf of Her Majesty for the public services of the Colony before making the same and upon such assignment or transfer and the entry thereof the transferee whilst holding a valid license shall be deemed to be the holder of the said tract claim or holding and the proprietor of the gold and gold ore therein within the meaning of the fourteenth clause of this Act.

Licenses to be for-  
feited on conviction  
of certain offences.

16. If any person shall whilst holding a license or lease as aforesaid be convicted of any felony or misdemeanor or shall be convicted as an idle and disorderly person or as a rogue and vagabond or an incorrigible rogue or of unlawfully selling or permitting to be sold any fermented or spirituous liquors or of keeping any gambling or other disorderly house or place then and in every such case the license or lease of such person shall thereupon by force of this enactment become

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become and be cancelled and of no force or effect and the claim or holding of such person shall thereupon be absolutely forfeited and shall be open to selection and occupation by any duly licensed person other than the person so forfeiting the same. Provided always that no summary conviction for any common assault shall subject the party convicted to the penalty and forfeiture imposed by this enactment.

17. Every person who after the expiration of the first seven days in every month or after such earlier day as shall be named by the local Commissioner for the issuing of licenses for the tract within which such land shall be situated shall mine or dig for gold in any land whatsoever in New South Wales without being duly authorized in that behalf by lease or license as aforesaid and every person who shall without being duly authorized as aforesaid carry on or follow any trade business calling or occupation or become resident upon or at any of the Gold Mines and Gold Fields proclaimed as such on Crown Lands (such persons not being within the exception hereinbefore contained) shall be liable on conviction before any two Justices of the Peace to the penalties following that is to say for the first offence a sum not exceeding five pounds for the second offence a sum not exceeding fifteen pounds nor less than five pounds and for the third and every subsequent offence a sum not exceeding thirty pounds nor less than fifteen pounds.

Penalties for digging &c. without being duly licensed.

18. All gold or gold ore and all implements and apparatus ordinarily used for the procuring of gold which shall be found in the possession or power of any person who shall have mined or dug for gold or who shall be reasonably suspected to have so mined or dug without being duly authorized so to do by lease or license shall be liable to be seized by any such Commissioner as aforesaid or his assistants or under the warrant of any Justice of the Peace and upon the conviction of such person of such offence or upon concealment or flight of the offender or suspected offender the same together with any tent hut or building erected or occupied by such person upon Crown Lands shall be confiscated by the summary order of any Justice of the Peace and shall thereupon be sold or destroyed as may seem best to the said Commissioner. Provided that if the suspected offender shall appear and shall not be convicted such gold and other property shall be forthwith restored to him.

Implements &c. of unlicensed miner to be seized and on conviction or flight to be confiscated.

19. All money and other property whatsoever which shall have been acquired by any person by or by means of his having mined or dug for gold without being duly authorized in that behalf as aforesaid shall be deemed the property of Her Majesty the Queen and may be seized wheresoever found or being by or by order of any Commissioner of Crown Lands unless the same shall previously have passed for valuable consideration to a *bona fide* purchaser thereof without notice of the unlawful acquisition thereof and upon conviction of such person of such unauthorized mining and digging under the provisions hereof and upon proof made to the satisfaction of any Justice of the Peace that such money and property was so as aforesaid acquired by or by means of such unauthorized mining or digging and that the same has not passed in manner aforesaid to a *bona fide* purchaser without notice as aforesaid the same shall be by such Justice summarily declared and adjudged to belong to Her said Majesty and shall thereupon lawfully vest in Her said Majesty for the public uses of the Colony.

Confiscation of all money and property acquired by unlicensed mining.

20. Every person who shall otherwise than under the authority of a lease or license granted upon condition of rendering a royalty only employ any unlicensed person in any of the said capacities for which such persons are hereinbefore required to hold a license as aforesaid or shall permit or suffer any such unlicensed person to be so employed

Penalties for employing unlicensed persons or permitting such persons to dig &c. on land held by persons so permitting.

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employed as aforesaid at mines or upon land held by such first-mentioned persons under a mining lease or license as aforesaid or who shall after notice thereof continue to employ as aforesaid any person disqualified under the provisions of this Act shall for and in respect of every such unlicensed person so employed be liable upon conviction thereof before any Justices of the Peace to the same penalties and forfeitures hereinbefore imposed upon unlicensed persons mining digging or employing themselves in any of the said capacities.

Penalty on persons allowing unlicensed persons to work on gold claims in partnership or otherwise in conjunction with such persons.

21. Every person who shall otherwise than under the authority of a lease or license granted on condition of rendering a royalty only permit or suffer any unlicensed person to employ himself in partnership with him or otherwise in his company in any of the said capacities for which such persons are hereinbefore required to hold a license as aforesaid upon the same claim or holding on which he is himself employed shall for and in respect of every such unlicensed person so employed be liable on conviction thereof before any Justice of the Peace to the same penalties and forfeitures as are hereinbefore imposed upon such unlicensed person himself.

Penalty on owners of private lands suffering persons to mine or dig before proclamation or without notice to Commissioner.

22. If the owner of any land which has passed under grant from the Crown shall permit or suffer any persons to mine or dig for gold on such land without a previous notice to the nearest Commissioner of Crown Lands that such mining or digging is about to be commenced thereon he shall upon conviction thereof before any two Justices of the Peace forfeit and pay to Her Majesty a sum not exceeding fifty pounds.

Licenses to be produced on demand subject to penalties as upon unlicensed persons.

23. Every person required by the provisions hereinbefore contained to hold a license as aforesaid shall immediately on demand made by any such Commissioner as aforesaid or any of his assistants produce and shew to such Commissioner or assistant the license if any which he shall hold and if any such person shall not forthwith produce and shew to such Commissioner or his assistant a proper and sufficient license he shall be deemed to be an unlicensed person within the provisions hereinbefore contained and shall be liable accordingly Provided that if such person shall prove to the satisfaction of the Justice of the Peace before whom he shall be brought that he was in fact duly licensed he shall be liable only to the extent of one-half of the penalties imposed by the seventeenth section hereof and shall not be subject to any forfeiture of goods or chattels.

Commissioner and his assistants may apprehend unlicensed persons.

24. It shall be lawful for any such Commissioner as aforesaid and his assistants without warrant to apprehend and detain until he can be brought before a Justice of the Peace for the purpose of being proceeded against for the penalties and forfeitures imposed by this Act any unlicensed person whom he may find mining or digging for gold or whom he may find residing on or carrying on or following any trade business calling or occupation otherwise than in connection only with pastoral or agricultural pursuits lawfully authorized as aforesaid and except as aforesaid.

Justice may issue warrant in the first instance or a summons only at his discretion.

25. It shall be lawful for any Justice of the Peace to issue his warrant for the apprehension of any person whom he shall upon sufficient information suspect to be an offender within any of the provisions of this Act and thereupon such person shall be apprehended accordingly and be dealt with according to law Provided that it shall be lawful for any such Justice if he shall in his discretion think fit in the first instance to issue a summons for the appearance of the suspected offender to answer the matter of the information given to such Justice and provided also that it shall be lawful for any Justice to take sufficient bail from any person who may be apprehended under warrant as aforesaid or who shall have appeared upon summons as aforesaid

Bail may be taken.

for

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for his due appearance before any Justice as aforesaid to answer a charge to be made against him under this Act.

26. It shall be lawful for any such Commissioner as aforesaid upon the complaint of any person licensed or authorized as aforesaid that any other person has encroached upon the claim or holding of the complainant to proceed forthwith to the spot and to inquire into the case and on his own view or upon evidence to determine the same in a summary way and to award reasonable costs to be paid by the unsuccessful to the successful party and if it shall appear to such Commissioner that the person complained against has so encroached by occupying mining digging or undermining such claim or holding or in any other manner whatsoever it shall be lawful for such Commissioner to cause the person so found encroaching as aforesaid his servants implements goods and chattels to be removed from the claim or holding so encroached upon and if any person shall resist the said Commissioner or his assistants or prevent him or them from causing such person so found to be encroaching his servants implements goods and chattels to be removed as aforesaid or shall after such Commissioner shall have determined the matter of any such complaint and pointed out the respective boundaries of the said parties again encroach as aforesaid such person so resisting such Commissioner or his assistants or so renewing such encroachment shall upon conviction thereof before any Justice of the Peace forfeit and pay for every such offence a sum not exceeding twenty pounds.

Commissioners may determine complaints of encroachment.

Penalty for resisting Commissioner and for renewing encroachment after decision.

27. If any person holding a lease or license authorizing him to mine or dig for gold upon condition of paying a royalty as hereinbefore mentioned shall by any fraudulent device or contrivance defraud Her Majesty of any portion of the royalty reserved by such lease or license or shall conceal any gold procured by him or falsify any accounts with the intent to commit such fraud such person shall be deemed guilty of a misdemeanor and shall on conviction thereof before any Court of competent jurisdiction be fined and imprisoned at the discretion of such Court and all officers and servants of such licensed person or lessee and other persons whatsoever who shall knowingly be concerned in any such fraud or attempted fraud whether with or without the knowledge or concurrence of such licensed person or lessee shall in like manner be deemed guilty of a misdemeanor and shall on conviction as aforesaid be liable to the like punishment.

Punishment of frauds in respect of royalties.

28. If any person shall fraudulently forge or imitate or assist in forging or imitating any such license as aforesaid or shall fraudulently use or exhibit as a genuine license any such forgery or imitation he shall be guilty of a misdemeanor and shall on conviction be liable to imprisonment with or without hard labor or to hard labor on the roads or other public works of the Colony for such term not exceeding twelve calendar months as the Court before whom he shall be tried shall award and if any person shall fraudulently personate any licensed person or shall use or exhibit as his own any license belonging or granted to any other person or shall use or exhibit as a valid license any license which shall have expired he shall for every such offence be liable on conviction before any Justice of the Peace to a penalty not exceeding fifty pounds nor less than ten pounds.

Penalties for counterfeiting licenses and for personating licensed persons.

29. This Act shall not be deemed to abridge or control the prerogative rights and powers of Her Majesty the Queen in respect of the Gold Mines and Gold Fields of New South Wales nor shall the same be deemed in any manner to abridge and control otherwise than by express terms or necessary or obvious inference the powers and authorities conferred upon the Commissioners of the Gold Fields appointed and acting as Commissioners of Crown Lands under the provisions of an Act of Council passed in the fourth year of the reign of

This Act not to abridge or control (except by express words or necessary or obvious implication) the Royal Prerogative or the authority of Commissioners.

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of His late Majesty King William the Fourth "for protecting the "Crown Lands of this Colony from encroachment intrusion and "trespass."

Power of Commissioners extended to Gold Fields on private lands.

30. Such Commissioners shall have the like powers and authorities in over and in respect of Gold Mines and Gold Fields opened and worked on private lands with the concurrence of the owner as by the said recited Act or by this Act they may have and may lawfully exercise in over and in respect of the Waste Lands of the Crown.

Punishment in default of payment of penalties.

31. Whenever any penalty shall have been imposed by any Justice or Justices under the provisions of this Act and the person convicted shall not forthwith pay the same into the hands of the convicting Justice or Justices it shall be lawful for such Justice or Justices to direct that such person be imprisoned in some gaol or house of correction with or without hard labor or kept to hard labor on the roads or other public works of the Colony as he or they shall think fit for a period of two months if the penalty shall not exceed five pounds and for a period of four months if the penalty be above five pounds and not exceeding fifteen pounds and for a period of six months if the penalty be above fifteen pounds and such person shall be detained and kept to hard labor accordingly unless he shall sooner pay the penalty and costs.

No formal information required.

32. In proceeding for any penalty confiscation or forfeiture under this Act it shall not be necessary to lay or file any formal information and the informer and parties interested may be admitted as witnesses and no complaint conviction order for confiscation or forfeiture or other proceeding before or by any Justice or Justices under this Act shall be quashed or set aside or deemed void or insufficient for want of form only or be removed or removable by *certiorari* or any other writ or process whatsoever into the Supreme Court.

Informer a competent witness.

Want of form cured.

Proceedings not removable to Supreme Court.

Protection of officers.

33. All actions for things done in execution of this Act or otherwise by any Justice or Commissioner or any constable or assistant to such Commissioner for the protection of the Gold Mines and Gold Fields and of the Revenue to be derived therefrom shall be commenced within three calendar months after the act committed or thing done and not otherwise and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action and in such action the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought or if a sufficient sum of money shall have been paid into Court after such action brought and before the said cause shall have been set down for trial by or on behalf of the defendant and if a verdict shall pass for the defendant or the plaintiff become nonsuit or discontinue such action after issue joined or if after demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs of suit as between attorney and client and have the like remedy for the same as any defendant hath by law in other cases.

Interpretation of terms "mining and digging."

34. The words "mining and digging" shall be understood to include any mode or method whatsoever whereby the soil earth or any rock or stone may be disturbed removed carted carried washed sifted smelted refined crushed or otherwise dealt with for the purpose of obtaining gold whether the same may have been previously disturbed or not Provided that nothing in this Act contained shall be construed to extend to any preliminary search or examination commonly called "prospecting" for the purpose merely of discovering the presence of gold in any locality The term "British subject" shall include all subjects of the British Crown by birth or naturalization or

Not to include prospecting.

under



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*Native Dogs Destruction.*

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under any certificate granted in conformity with the Act of Council passed in the eleventh year of Her present Majesty's reign intituled "*An Act to amend the Laws relating to Aliens within the Colony of* 11 Vic. No. 39. "*New South Wales.*"

35. This Act shall commence and take effect from and after the first day of February one thousand eight hundred and fifty-three and shall continue in force until the end of the year one thousand eight hundred and fifty-four.

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