1874.

NEW ZEALAND.

LICENSING ACT OF 1873,

(INSTRUCTIONS AND CORRESPONDENCE RELATING TO).

Return to an Order of the House of Representatives, No. 5, of the 9th July, 1874.

"That there be laid upon the Table copies of all Instructions issued to Resident Magistrates or Licensing Boards, and all Correspondence with either, relating to the introduction and action of the Licensing Act of 1873."—(*Hon. Mr. Fox.*)

No. 1.

MEMORANDUM on "LICENSING ACT, 1873."

SECTION 3.—Proclamation of Districts.—The section gives full latitude in defining the boundaries of districts. To give it a fair chance of efficiency, they should not be large. Each district should include so much as may be considered the support of any given group of houses. Thus, in Wairarapa there may be four districts, of which the centres would be Masterton, Carterton, Greytown, and Featherston. In Rangitikei, there might be Bull's, Marton, and Turakina. In municipalities, the several wards might do, or they might be subdivided. The Resident Magistrates should be required to suggest boundaries of districts, guided by the above principle.

Section 4.—This clause may seem superfluous. It is, in fact, a "vestige of creation" which has survived the original Bill, mutilated in its passage through the House. It has, however, an intelligible operation in reference to clauses 5 and 15.

Section 13.—In section 7, defining kinds of licenses, "bush licenses" are not specified, being considered as included in "publicans' licenses." Their specific mention in section 13 was to take them out of the jurisdiction of Provincial Governments, as at present, and place them on the same footing as all other licenses to be granted by the Licensing Court.

Sections 16 and 17.—The Licensing Court is not in accordance with my suggestion, which was for an elected Board. Mr. Vogel proposed a permanent official, nominated by the Government. The Court provided by the Act is neither one thing nor the other—a lame sort of compromise. The object, however, was to get rid of the ordinary Justices of the Peace sitting as a Licensing Board *ex officio*. The only suggestion I can make (and I do it with hesitation), is to leave it to the Resident Magistrate to suggest his own colleagues, instructing him to avoid Justices of the Peace as far as possible.

Section 23 contains the "Permissive Veto." The provisions are substantially the same as in the Auckland Act of 1871. In my original Bill, in which I proposed to enact the more sweeping prohibitory clauses known as Sir Wilfred Lawson's, there was machinery for taking the vote of the residents, to be put in operation by the Resident Magistrate, on request of a given number of ratepayers. The loss of this part of the Bill leaves the permissive clause, which was substituted, in a very imperfect condition; its operation being dependent on a memorial, the signature of which necessarily involves so great an amount of personal labour as to be very ominous to the prospect of success on any general scale. I believe the Act will have to be altered in this particular. The Act, however, leaves it to the judgment of the Licensing Court to decide whether the requisite proportion has signed, and possibly in rural districts, if not too large, the material for ascertaining the fact may be within their reach.

7th October, 1873. WILLIAM FOX.

No. 2.

The UNDER SECRETARY, Department of Justice, to certain RESIDENT MAGISTRATES.
(Circular No. 88.)

SIR,— Department of Justice, Wellington, 14th October, 1873.

I have the honor, by direction of Mr. Reynolds, in the absence of the Minister of Justice, to call your attention to the 3rd section of "The Licensing Act, 1873," and to request you to be good enough to furnish the Government with descriptions of the outward boundaries of districts to be proclaimed licensing districts, within your district, as Resident Magistrate. Such districts may, as provided by the Act, have their boundaries conterminous with those of Municipal Wards and Road Board or School Districts, provided the latter are not too large, as large districts are not generally desirable.

Where the Municipal Wards, Road Board, or School Districts are large, they should be subdivided, so as to include so much country as may be considered to be the support of any given group of public-houses.

A copy of the Act is enclosed.

I have, &c.,
R. G. Fountain,
Acting Under Secretary.

The Resident Magistrate.

No. 3.

Telegram addressed to certain Resident Magistrates from Department of Justice.

Government Buildings, 20th January, 1874.

Please recommend, for the consideration of Government, the names of three persons, to be nominated as Commissioners in your district, under 17th section of "Licensing Act, 1873."

R. G. Fountain,
Under Secretary for Justice.

No. 4.

Telegram sent to Resident Magistrates concerned.

Government Buildings, 25th February, 1874.

You have been appointed Resident Magistrate for the District, under "Licensing Act, 1873." For description of district, see *Gazette* No. 11 of this year. See also Sections 4, 13, &c., of Act.

R. J. Fountain.

No. 5.

The Under Secretary, Department of Justice, to certain Resident Magistrates.

(Circular No. 4A.)

Sir,— Department of Justice, Wellington, 16th March, 1874.

I have the honor, by direction of the Acting Minister of Justice, to enclose a copy of a warrant under the hand of His Excellency the Governor, appointing certain gentlemen to be Commissioners under "The Licensing Act, 1873," and to request you to be good enough to inform those in your districts of their appointment.

I have, &c.,
R. G. Fountain,
Under Secretary.

The Resident Magistrate.

No. 6.

The Resident Magistrate, Christchurch, to the Hon. the Minister of Justice.

Sir,— Resident Magistrate's Office, Christchurch, 8th June, 1874.

In reply to your letter of the 22nd May last, No. 272, asking for my opinion as to the working of the present Licensing Act, I have the honor to state that I consulted the other Licensing Commissioners, Messrs. Tancred, Harman, and Lee, and that we desire to make the following suggestions in the event of the Government contemplating any legislation on the subject during the ensuing Session of the General Assembly:—

1. It appears unnecessary that wholesale dealers should be brought under the operation of the Licensing Act. All brewers and wine and spirit merchants are already obliged to get licenses from the Collector of Customs, under "The Distillation Act, 1868;" and a great number of dealers who hold such licenses have overlooked the necessity of applying in time for licenses under "The Licensing Act, 1873." It seems an unnecessary hardship and interference with trade that they should be obliged to apply for licenses under two Acts, to two different authorities, especially as under "The Licensing Act, 1873," if they do not apply at a particular time, they forfeit their right to trade in liquors for a whole year.

2. We are strongly of opinion that bottle licenses are mischievous, as tending to encourage clandestine drinking among women and families. Any one who wants one bottle at a time of any wine or spirit can get it at a respectable hotel.

3. In Schedule D (line 2), the word "colony" should be read instead of "province," to avoid a discrepancy between the Schedule and the provision of section 11. There is no provision in this province for a packet license fee.

4. There is no provision for entertaining applications for new licenses that may become necessary, except at the annual meeting on the first Monday in March. A second meeting, say on the first Tuesday in September, for that purpose, would be convenient. We think that when the holder of an old license has omitted through inadvertence to give due notice of intended application for renewal, he should be allowed to give notice, and make his application at an adjourned sitting, on payment of a penalty of (say) £5.

In section 30, also, we think a *locus penitentiæ* should be provided, by allowing a license to be taken out late, on payment of a penalty of £5.

5. In section 18 of Act, no number of Commissioners is specified as a quorum.

6. We think it would be advisable to give the Courts discretionary powers to grant licenses to keep certain houses open during extended hours in special cases, and in certain cases to impose special conditions. Whenever extended privileges are granted, an extra fee should be prescribed by the Court.

7. Sections 23 and 24 are unworkable in their present form.

8. There is no provision in the Act to compel the attendance of witnesses. When complaints are made against a house, it is most important, for the sake of all parties concerned, that the Court should have power to issue subpœnas, and that it should have such other powers of maintaining order and securing necessary evidence as are required by a Court of Justice.

I have, &c.

CHAS. C. BOWEN,
Resident Magistrate.

The Hon. the Minister of Justice, Wellington.

No. 7.

The RESIDENT MAGISTRATE, Dunedin, to the Hon. the MINISTER of JUSTICE.

SIR,— Resident Magistrate's Office, Dunedin, 5th June, 1874.

I have the honor to acknowledge the receipt of your letter of 22nd May, requesting my opinion on the working of the present Licensing Act, and in answer beg to say,—

1. The constitution of the Licensing Court is a great improvement on the mode of granting licenses formerly in practice. No quorum is mentioned.

It is expedient to provide for the absence of a member of the Court.

I am informed that counsel in Dunedin have given an opinion that the proceedings of the Court held here are invalid by reason of the informal or imperfect constitution of the Court.

It is stated that the Resident Magistrate appointed to act should have been specially appointed by the Governor, and that the Proclamation in the *Gazette* is insufficient, as it contains no appointment of the Resident Magistrate in terms of section 4.

It is expedient that a clause be inserted in the Amendment Act confirming past proceedings, notwithstanding any informality or irregularity.

2. Transfers of hotels often take place during the year. Provision should be made enabling the Resident Magistrate to authorize transfers when necessary.

3. It is advisable to repeal the Provincial Ordinances and consolidate the law.

4. The time for making application for wholesale licenses is not clearly specified in section 12. The section may be interpreted that such application may be granted while the Court is sitting for the granting of certificates for publicans' licenses.

5. The Act is silent in regard to the time for making application for other certificates than publicans and wholesale. The time should be specified in every class of licenses, including bottle and brewers' licenses.

6. No certificate for a publican's license should be granted unless there is *bonâ fide* accommodation for travellers, say, four bed-rooms and two sitting-rooms, with stabling and conveniences.

7. No female under thirty years of age should be allowed to act as barmaid. There was a painful case here last month. A woman who had been barmaid at the Universal Hotel was found wandering in a state of nudity at Half-way Bush, suffering under *delirium tremens*. She was sent to the Lunatic Asylum.

8. Special legislation is required for railway refreshment-rooms. It is suggested that a public bar at a station, unless on a roadside station at a convenient place on a long journey, is highly inexpedient. A public bar is not required at a terminus. Those at Dunedin and Port Chalmers have been perverted from their proper use for travellers; and at the latter place especially the bar and platform in front has become a lounging place for men having no business on the platform at all. The enormous rent at Port Chalmers (£485) shows that it is supported from outside. The sale of intoxicating liquors at stations places a temptation in the way of employés, productive of danger to the public.

9. Applicants should pay a fee on lodging their application, and also a hearing fee, and fee for certificates, to be defined in a Schedule to the Act. At present there is no fund from which to defray expenses incurred. In Otago, most of the license fees belong to the municipalities, and there is no provision for charging them with expenses. It is only reasonable that these should be paid by the applicants, as was done in the majority of provinces heretofore.

10. Schedules should be annexed to the Act, providing forms of applications for bottle, wholesale, brewers', and packet licenses, and a form of bottle license should be given.

11. The present discretionary power, having worked well, should not be diminished.

12. Clauses authorizing search for adulterated liquors, and prohibiting possession and sale thereof, should be added. Penal clauses should also be added, punishing licensees for permitting gambling, supplying liquor to children under sixteen, allowing prostitutes to assemble at the bar or meet with men in their houses, supplying liquor to intoxicated persons or to habitual drunkards after notice from the police, neglecting to keep a light burning above the principal doorway, selling liquor in prohibited hours or on Sunday.

13. Penal clauses are also necessary to punish for sly grog-selling.

14. Provision is required for granting temporary special licenses for race meetings, regattas, balls, and the like.

15. Licensed houses should not have privilege of concert rooms or music halls without special permission of Resident Magistrate. In Dunedin there are two theatres, which renders such places (*i.e.* music halls) unnecessary. Where they exist, they are found to be the resort of thieves and prostitutes, and productive of crime.

16. Power should be given to magistrates to extend hours on any special occasion, such as public dinners or entertainments.

17. No wages should be paid at any public-house.

I have, &c.,
JOHN BATHGATE,
Resident Magistrate.

The Hon. the Minister of Justice, Wellington.

No. 8.

The RESIDENT MAGISTRATE, Auckland, to the Hon. the MINISTER of JUSTICE.

SIR,— Resident Magistrate's Office, Auckland, 10th June, 1874.

With reference to your letter of 22nd ultimo, No. 273, requesting me to give my opinion as to the working of the present Licensing Act, I have the honor to inform you that the "Licensing Act, 1873," in conjunction with the Provincial Act, 1871, works sufficiently well with the following exceptions:—I think the Licensing Court should have power to grant certificates for wholesale licenses and to transfer licenses at any period of the year, subject to the restrictions contained in the 28th clause of the Provincial Act with respect to notices, &c.

I have, &c.,
THOMAS BECKHAM,
Resident Magistrate.

The Hon. the Minister of Justice, Wellington.

No. 9.

The RESIDENT MAGISTRATE, Auckland, to the Hon. the MINISTER of JUSTICE.

SIR,— Resident Magistrate's Office, Auckland, 22nd June, 1874.

Adverting to your letter of 22nd ultimo, No. 273, and to my reply thereto, I have now the honor to draw your attention to the clauses of "The Imperial Licensing Act, 1872," 35 and 36 Victoria, c. 94, noted in margin, * and to state that they would be a most admirable adjunct to "The Licensing Act, 1873," passed by the Legislature of New Zealand. I also beg to call your attention to the 38th clause of "The Auckland Provincial Licensing Act, 1871," and the 4th subsection of clause 51 of the Imperial Act, and to state the latter was so worded to meet the difficulties presented by the judgment in the case of Taylor *v.* Humfries, 17 C.B. (N.S.), 539; and to suggest that our Licensing Act should be so altered, to relieve the complainant or prosecutor of the onus now cast upon him, in accordance with the judgment I have cited.

I have, &c.,
THOS. BECKHAM,
Resident Magistrate.

The Hon. the Minister of Justice, Wellington.

* Sections 1, 9, 12, 14, 15, 18, 25, 30, 33, 34, 44, subsection 4 of 51, 55, 56, 57, 58.

No. 10.

The RESIDENT MAGISTRATE, Napier, to the Hon. WILLIAM FOX, M.H.R.

SIR,— Resident Magistrate's Court, Napier, 11th May, 1874.

I have the honor to acknowledge the receipt of your letter of 6th April, addressed to me as Chairman of the Licensing Courts, and conveying a complaint against three licensed houses in this province. One of these houses was in the district assigned to the Taupo Court. I forwarded a copy of your letter; and I learn that the license of Hart and McKinlay, of Tarawera, has been refused. I brought your letter also before the Courts of the Petane and Waipawa Districts, of which I am Chairman. The Pohui house was refused its license, and that applied for by Elmbranch was postponed until the 9th June. In this latter case, the house is situated in the bush, some twenty miles from any other licensed house, and on a line of road which it is the policy of the Government to open up by coaches. Your representation was supported by other complaints in the case of Elmbranch; but it was also pointed out that a new house had been lately built (opened since your visit), and that great inconvenience would result to travellers on this new line of road if there should be no house between Ruataniwha and the Manawatu Gorge. As no fresh application could now be received, the Court was adjourned, and at its next meeting will consider whether the license shall be granted on condition of an immediate transfer to a more fit man, the present building being reported to the Court as unobjectionable.

I have to thank you for the assistance you have rendered the Courts by furnishing them with the information contained in your letter. I pointed out to the Good Templars at Ngaruroro and Waipawa that their efforts would have had a more practical result had they pursued the same course, and complained of ill-conducted houses, rather than included all in one general denunciation. Houses were licensed which perhaps should not have been licensed, because the Courts had no evidence before them of mismanagement, except in a few cases, in most of which the license was refused.

I observe that you object strongly to the divisions of the districts. These were fixed on my recommendation, and if there be any blame attributable it must rest on my shoulders. I confess that, reading the Act as I understand you wish it to be read, it seems to me that it would be impracticable, and would give rise to the most furious discords, and hardships innumerable. I pointed out at Waipawa that if that little township had been made a separate district, every village with a public-house must have been awarded that questionable privilege. We all know the animosities that in very small communities grow out of even trivial causes; how much more, then, where every one might feel his power to influence the livelihood of some and the comfort and convenience of others of his neighbours. I

read the Act as contemplating the holding a Court in each district; but I see that in practice this has not in many cases been done. Still, in suggesting the districts I was guided by my reading of the Act; and I saw that to cut the province up into the numerous small districts as desired by the Good Templars, would render it a matter of extreme difficulty, if not of impossibility, to get the necessary Commissioners to sit and act. There were not, moreover, suitable petty subdivisions existing, as road board or school districts, which could be adopted for the purposes of the Act. I do not see that the districts I have suggested are so very large. The province is divided into six districts, and one public-house is in a seventh (Taupo). Now, although these districts may in some cases be geographically large, they have not a large population. The largest district (Waipawa) is chiefly uninhabited bush and mountainous country. If houses are to be closed because they sell liquor rather than because they are misconducted, then an orderly and well-conducted house might be closed, and a very inferior one licensed a mile or two off, if the licensing rested with the group of householders immediately contiguous. Some of the houses exist almost exclusively for travellers, there being few, if any, residents. Many such must have come under your notice during your late journey. How could these be dealt with on the minute subdivision plan?

I will enclose reports of the meetings of our several Licensing Courts, if I can obtain a spare copy of the *Hawke's Bay Herald*. The *Hawke's Bay Times*, which has for many years been a staunch and consistent organ of the temperance societies, will no doubt have been sent you. Its reports were good of the meetings, which were attended by its ordinary reporter, viz. Napier, Petane, and Ngaruroro.

I have, &c.,
H. B. Sealy, R.M.,
Chairman of Napier, Petane, Ngaruroro, Waipawa, and Porangahau Licensing Courts.

The Hon. W. Fox, M.H.R., Marton, Rangitikei.

No. 11.

The Hon William Fox, M.H.R., to the Resident Magistrate, Napier.

Sir,— Westoe, Marton, May, 1874.

I have the honor to acknowledge your letter of the 11th current, and to thank you and your colleagues of the Licensing Bench for the courteous manner in which my complaints of certain houses in Hawke's Bay Province have been received and acted upon, as well as for the trouble you have taken in your letter under acknowledgment, to explain the grounds of the action taken by yourself and brother Commissioners. The treatment I have received at your hands is an agreeable contrast to that I experienced from the Foxton Bench, to whom I addressed similar complaints. That Board neither acknowledged the receipt of my letter nor acted upon it; though in one case the conduct of a publican complained of involved loss of life, and in the other a very objectionable house. There had been no application sent in according to the requirements of the Act, or posted at all, as the Act requires, and the residents in the district had consequently had no opportunity of exercising their veto.

You will perhaps allow me to make a few remarks on the reasons you give in your letter for the course pursued in the Waipawa and Ngaruroro cases, and on some other points, You appear to me to have misunderstood the spirit of the Act. The fundamental principle of the whole Act is to give to the adults in every district the power of prohibiting the existence of any individual public-house, or, by exhaustion, of any public-house at all, within the district. It seems to me that in defining the districts it was your duty to have done so in such manner as to enable the persons intrusted with this veto to exercise it with the greatest facility. The obvious way of achieving this end was (as I had indicated to the Colonial Secretary) to include in any one district only such persons as might be supposed to have a direct interest in any given group of public-houses, and not to include remote residents, who neither received benefit nor injury from that particular group, but had a group of their own nearer to them. In short, the districts should have been made as small and not as large as possible. Had this been done in the two cases named, there is little doubt that the right conferred on the people by the Act would have been exercised. By the course pursued by you, and by other Magistrates in this and other districts, the provision of the Act has been entirely nullified. The only difference it could have made to the Licensing Benches would have been that they would have had to hold a few more Courts—in your case apparently three or four more at most. You say that the members of the Benches would probably have declined so much labour. If those appointed had so declined, I have no doubt the Government could have found others willing to give a few days to the performance of a most important public duty; and if the Government had issued their Proclamations in anything like reasonable time, such a difficulty as this, if it existed, could have been easily adjusted.

As to the "furious discords and hardships innumerable" which you suppose likely to have occurred if you had made smaller districts, I cannot understand why the danger of such contingencies should be less in larger than in smaller districts, unless on the supposition that the Act would not be put in force at all in the larger ones. But the suggestion is, I am confident, entirely unfounded. We have in New Zealand, as a rule, no such rowdy population in our country villages as to get up *émeutes* formidable enough to frighten the majesty of the law. If any little "rumpus" should ever occur, it would be of dimensions such as the ordinary police force and a firm magistracy could easily cope with. There would be no more risk of disturbance of the public peace than on the ordinary elections for the local Legislatures. In America, prohibitory laws have been put in force in thousands of cases among people far more excitable than ours, and I never heard of a single riot resulting. You may read in a late *Times* (London) of the quiet way in which first-class houses in Boston are submitting to the law, while large cellars full of their choice wines, &c., are being seized and destroyed by the police. In Great Britain, individual action of the landowners or a few Justices of the Peace have swept whole districts of public-houses, but no furious discords or hardships occurred. But even if there were any reason to anticipate such results as you do, the matter seems to me not to be one for your consideration. All such contingencies were fully discussed during the three Sessions when the Permissive Bill

was before the Legislature; and if it was satisfied to pass the Act notwithstanding, its eems to me no part of the duty of the Resident Magistrate to defeat its operation, for that has been the practical result, on the ground of any such danger to the peace of society. Such considerations were for the Legislature.

I think you are entirely in error in supposing that it was the proper or the better course for the Templars to have assigned reasons for refusing licenses in every separate case. The whole intention of the Act is to enable the veto to be exercised without any reason being given, except that the majority of the people concerned so decide. The Act has recognized the right of the people in this matter, and all that it requires is evidence that the required majority of the people has said yes or no. If they have said nothing, the issue of the license then rests in the discretion of the Licensing Bench (section 22); and I apprehend it is for it to make proper inquiry, and not to expect Templars, or any one else, to give reasons. The reasons the Templars had were no doubt general, and founded on the injury done to society by the existence of the liquor traffic. The law has given a standing ground to such objectors; and if the districts were of such size as not altogether to render volunteer action impossible, the veto of the requisite majority would be absolute. In the cases mentioned, it is clear that had the districts been such as the principle suggested by me to the Colonial Secretary would have indicated, the veto would have taken effect to the fullest extent, and no reasons could have been demanded of the memorialists. What seems hard is, that such being the case, the Bench should not, on receiving the memorials, in the exercise of the absolute discretion possessed under clause 22, have given them the effect which they would have had but for the undue size of the districts. The Bench could have done so, and in my humble opinion ought to have done it.

The argument incidentally used by you in Elmbranch's case, that there must be a public-house for coach-travellers at certain stages, I do not deny. But why a public-house licensed to sell intoxicating drink? Would not a temperance accommodation house do as well? It is said such houses are not generally comfortable. I can only say that I have stopped at many, and found them far more comfortable than the generality of licensed houses. It is said also that accommodation houses will not pay, and therefore will not exist in such situations, unless licensed to sell intoxicating drink. This practically means, unless licensed to demoralize the residents in the neighbourhood, permanent or temporary, particularly sawyers, Maoris, and road parties. Is the provision of intoxicating liquors for a few transient travellers so pressing a necessity as to compensate for this? But if an unlicensed house would not pay in a few instances, such as Elmbranch's, why should not the Government, being anxious, as you say, to encourage travel on that or any other road, subsidize an unlicensed house to a small extent? Would there be anything more unreasonable in its subsidizing a house for travellers to eat and sleep in, than in its subsidizing the coach in which they ride?

The great defect of the present Act undoubtedly is the want of machinery for the collection of votes. It is a great anomaly to recognize a political right in the people, and to leave them to exercise it only by volunteer action, and the laborious canvassing of the voters for signatures to a memorial. The Act introduced by me contained provisions which would have made it efficient in this respect, and enabled the votes to be taken without risk, either of furious discords or the necessity of any impossible labour on the part of the public, such as the canvassing of large districts is. To strike out such machinery was in my opinion fatal to the prospect of effect being given to the fundamental intention of the Act; and till it, or something analogous, is added by fresh legislation, I have little hope of the people finding themselves in a position to exercise a right which the Legislature has admitted they possess—that of controlling the liquor traffic of the colony.

I have to thank you, in conclusion, for the newspaper reports of the proceedings in the Licensing Courts in your province, which are very interesting, and have the honor to remain, &c.,

WILLIAM FOX.

No. 12.

OTAGO PROVINCIAL COUNCIL.

ADDRESS No. 123.

Licensing Laws.

RESOLVED,—"That, in the opinion of this Council, the Licensing Laws at present in force in this province should be amended in the following particulars, viz.,—

(1.) That provision should be made for the transfer of publicans' and bottle licenses between the times of the sittings of the Licensing Court.

(2.) That in order to prevent the undue creation of vested interests in the liquor traffic, no new publican's license should be granted in any district until a memorial signed by a majority of the male adult residents in the district be presented to the Licensing Court, the genuineness of the signatures to the memorial being verified as provided for by section 23 of "The Licensing Act, 1873;" and that a respectful address be presented to His Honor the Superintendent, requesting that he will be pleased to forward the foregoing resolution to the General Government, with a view that the Licensing Act may be so amended."

Passed the Provincial Council, 9th June, 1874.

JOHN L. GILLIES,
Speaker.

WM. E. SESSIONS, Clerk of Council.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington—1874.

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