

THE  
GENERAL STATUTES

OF THE  
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated  
All General Laws of the State in Force December 31, 1894

COMPILED AND EDITED BY  
HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY  
FRANCIS B. TIFFANY and Others

AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL  
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CHAPTER 88.

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(1) STATE BOARD OF EXAMINERS IN LAW—ADMISSION TO PRACTICE.

§ 6172. State board of examiners.

As soon as possible after the passage and approval of this act the justices of the supreme court of this state shall appoint from the members of the bar of Minnesota, learned in the law, one person from each congressional district, now or hereafter created, to constitute a state board of examiners in law.

(1891, c. 36, § 1.)

See *In re Brown*, 32 Minn. 443, 445, 21 N. W. Rep. 474; *In re Arctander*, 26 Minn. 25, 28, 1 N. W. Rep. 43.

§ 6173. Same—Term of office.

The term of office of the said board shall be as follows: Three shall be appointed for one year, two shall be appointed for two years, and two shall be appointed for three years, and their successors shall receive their appointment in a like manner for terms of three years each; but in case of a vacancy occurring by death or otherwise there shall be appointed in a like manner a person to serve through the unexpired term of the member to whose place he is appointed.

(1891, c. 36, § 2.)

§ 6174. Same—Officers—Examinations.

The said board shall elect a president, secretary and treasurer; shall have its headquarters at the capital of this state; shall have a common seal, and the president and secretary shall have the power to administer oaths. The said board shall, at least three times in each year, hold public examinations for admission to the bar of this state, which examinations shall be both written and oral, in such places in this state as the supreme court shall direct and at such times as the said board shall determine. The said board shall keep a record of all its proceedings and also a record of all applications for admission to the bar, and shall enroll, in a book kept for that purpose, the name of each person admitted as an attorney at law.

(Id. § 3.)

§ 6175. Report to the supreme court.

The said board shall, as soon as practicable thereafter, report the result of all examinations to the supreme court, with such recommendations as to said board shall seem just, and the supreme court shall, after considering said report and said recommendations, enter an order in each case authorizing or directing said board to reject such applicant, or to issue to him a certificate of admission to the bar.

(Id. § 4.)

§ 6176. Examination fees—Compensation of secretary.

The said board shall receive from each person applying for examination the sum of fifteen dollars as a fee therefor, and all fees received by said board shall

<sup>1</sup>An act to establish a uniform standard of admission to the bar of this state, and to punish persons violating the provisions of this act. Approved April 27, 1891. By § 9 of this act, Laws 1883, c. 104, Laws 1889, c. 93, and G. S. 1873, c. 88, §§ 3, 4, 8, are repealed.

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be deposited with the treasurer of said board and applied toward the expenses and compensation of the respective members of said board. The secretary of said board shall be allowed such compensation for his services from the fees so received as the said board shall determine.

(1891, c. 36, § 5, as amended 1893, c. 129, § 1.)

## § 6177. Per diem to examiners.

There shall be paid out of the treasury of said board to each examiner appointed as aforesaid, a compensation not exceeding ten dollars per day, and his actual necessary expenses in going to, holding and returning from any such examination.

(1891, c. 36, § 6.)

## § 6178. Admission to practice.

No person shall hereafter be admitted to practice as an attorney and counselor at law, or to commence, conduct or defend any action or proceeding in any of the courts of record of this state, in which he is not a party concerned, either by using or subscribing his own name, or the name or names of any other person or persons, unless he has complied with and been admitted under and pursuant to such rules as the supreme court of this state shall prescribe; Provided, That the provisions of this act shall not apply to or affect persons admitted to the bar of this state under pre-existing laws. Provided, That graduates from the law department of the University of Minnesota shall, upon presentation of their diploma from such university to the supreme court or any district court of this state, at any time within two years from the date of such diploma, be entitled to a certificate of admission to the bar, without any examination or fee whatever; and such court shall thereupon enter an order authorizing and directing the clerk of said court to issue to such graduate a certificate of admission to the bar, upon proof satisfactory to said court that such graduate is a citizen of the United States, a citizen and resident of the state of Minnesota, that he is twenty-one years of age, of good moral character, and upon his subscribing such oath as is now provided by statute for persons upon their admission to the bar.

(Id. § 7.)

## § 6179. Penalty for appearance as attorney, when.

Any person who shall appear as an attorney or counselor at law in any action or proceeding in any court of record in this state to maintain or defend the same, except in his own behalf when a party thereto, unless he has been admitted to the bar of this state, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one hundred dollars, and it shall be the duty of the respective county attorneys in this state to prosecute violations of this act; but the district courts of this state shall have sole original jurisdiction of this offense. Provided, That any attorney or counselor residing in any of the other states or territories, wherein he has been admitted to practice law, and who shall attend any term of the supreme or district courts of this state for the purpose of trying or participating in the trial or proceedings of any action or proceeding therein pending, may be permitted to try or participate in the trial or proceedings in such action or proceeding without being subject to the provisions of this act.

(Id. § 8.)

(2) DUTIES AND AUTHORITY OF ATTORNEYS.

## § 6180. General duties of attorneys.

It is the duty of any attorney and counsellor:

First. To support the constitution and laws of the United States and of this state;

Second. To maintain the respect due to the courts of justice and judicial officers;

Third. To counsel or maintain such actions, proceedings or defences, only, as appear to him legal and just, except the defence of a person charged with a public offence;

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Fourth. To employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;

Fifth. To maintain inviolate the confidence, and, at every peril to himself, to preserve the secrets of his client;

Sixth. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

Seventh. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest; and,

Eighth. Never to reject, for any consideration personal to himself, the cause of the defenceless or oppressed.

(G. S. 1866, c. 88, § 5; G. S. 1878, c. 88, § 5.)

### § 6181. Penalty for deceit or collusion.

An attorney or counsellor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge, or a party to an action or judicial proceeding, is punishable for a misdemeanor, and shall also forfeit, to the party injured, treble damages, recoverable in a civil action.

(G. S. 1866, c. 88, § 6; G. S. 1878, c. 88, § 6.)

### § 6182. Penalty for permitting name to be used by others.

If an attorney and counsellor knowingly permits a person not his general law partner to sue out process, or to prosecute or defend an action or proceeding in his name, he, and every person who so uses his name, shall severally forfeit to the party against whom the process was issued, or the action or proceeding prosecuted or defended, the sum of fifty dollars, recoverable in a civil action.

(G. S. 1866, c. 88, § 7; G. S. 1878, c. 88, § 7.)

### § 6183. Person not an attorney shall not appear in actions.

No person shall appear in any action or proceeding, in the supreme or district court, to maintain or defend the same, unless previously admitted to practice, as herein provided.

(G. S. 1866, c. 88, § 8; G. S. 1878, c. 88, § 8.)

See § 6179.

### § 6184. Authority of attorney.

An attorney and counsellor has authority:

First. To bind his client, in any of the proceedings in an action or special proceeding, by his agreement duly made or entered upon the minutes of the court; but such agreement or stipulation shall be disregarded unless made in open court, or in presence of the clerk, and entered in the minutes by him, or in writing and signed by the party against whom the same is alleged, or his attorney;

Second. To receive money claimed by his client in an action or special proceeding, during the pendency thereof, or within two years after judgment, and upon the payment thereof, and not otherwise, to discharge the claim, or acknowledge satisfaction of the judgment.

But this section does not prevent a party employing a new attorney to issue an execution upon a judgment, or to take other proceedings prescribed by the statute for its enforcement; and when he does so, the authority of the former attorney ceases.

(G. S. 1866, c. 88, § 9; G. S. 1878, c. 88, § 9.)

SUBD. 1. That a stipulation agreeing to the existence of certain facts was made by a former attorney for the defendant, and, of four separate defenses, stipulates away all but one, is not sufficient ground for setting it aside. *Bingham v. Supervisors Winona Co.*, 6 Minn. 136, (Gil. 82.)

Where judgment has been rendered in an action, and execution issued and levied on the property of the defendant, his attorney has no authority to agree with the plaintiff that the property levied on shall be sold at private sale by a person other than the sheriff. *Kronschable v. Knoblauch*, 21 Minn. 56.

An attorney for the defendant may stipulate for dismissal of statutory demand for second trial in ejectment. *Bray v. Doheny*, 39 Minn. 355, 40 N. W. Rep. 262.

The attorney's stipulation that the action shall abide the event of another action is

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binding on adult parties, but not on infant parties unless ratified by the court. *Eidam v. Finnegan*, 48 Minn. 53, 50 N. W. Rep. 933.

**SUM.** 2. The attorney of a judgment creditor is, while his authority to enforce and collect the judgment continues, authorized to act for his client in protecting and retaining the judgment against any proceeding in the same action to avoid it, and notice of such proceeding should be served on him. *Sheldon v. Risedorph*, 23 Minn. 518.

Where the attorneys for the judgment creditor issued execution, and their acts were acquiesced in by an assignee of the judgment, held that the latter was bound by the sheriff's paying to the attorneys the money collected on the execution. *Gill v. Truelssen*, 39 Minn. 373, 40 N. W. Rep. 254.

The foreclosure of a mortgage under a power of sale is not "a special proceeding." *In re Grundysen*, 53 Minn. 346, 55 N. W. Rep. 557.

**TERMINATION.** The authority of an attorney implied in his retainer to prosecute or defend an action ceases upon the entry of judgment against his client. *Berthold v. Fox*, 21 Minn. 51.

### § 6185. Proceedings when attorney appears without authority.

If it is alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his acts; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his assumption of authority.

(G. S. 1866, c. 88, § 10; G. S. 1878, c. 88, § 10.)

### § 6186. Attorney required to produce authority.

The court or a judge may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and, until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear.

(G. S. 1866, c. 88, § 11; G. S. 1878, c. 88, § 11.)

An *ex parte* order requiring a plaintiff's attorney to file evidence of his authority to prosecute the action is void, and need not be regarded. *Farrington v. Wright*, 1 Minn. 241, (Gil. 191.)

### § 6187. Private consultation with prisoners.

That all public officers, sheriffs, coroners, policemen, or other officers or persons, having in custody any person committed, imprisoned or restrained of his liberty for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practicing attorney at law of this state who may have been retained by or in behalf of such person so restrained of his liberty, or whom such person may desire to see or consult, to see such person and consult with him alone and in private, at the jail or other place of custody.

(1887, c. 187, § 1; <sup>2</sup> G. S. 1878, v. 2, c. 88, § 11a.)

### § 6188. Same—Notice to attorney.

That all public officers or other persons having in custody any person arrested, committed, imprisoned, or restrained of his liberty for any alleged cause whatever, shall, upon being requested so to do by such person so restrained of his liberty, and before other proceedings shall be had, and as soon as practicable after such request is made, notify any practicing attorney at law residing in the town, city, or place wherein such person is so restrained of his liberty, that such person desires to see and consult with the attorney so notified.

(1887, c. 187, § 2; G. S. 1878, v. 2, c. 88, § 11b.)

### § 6189. Same—Violation of act—Penalty.

Any public officer or other person who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by

<sup>2</sup> An act entitled "An act providing for private consultation between attorneys and prisoners." Approved February 21, 1887.

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imprisonment in the county jail for a period of not less than thirty days, nor more than ninety days, or by such fine and imprisonment, at the discretion of any court of competent jurisdiction; and such officer or other person shall also forfeit and pay to the person aggrieved one hundred dollars, the same to be recovered in a civil action.

(1887, c. 187, § 3; G. S. 1878, v. 2, c. 88, § 11c.)

## (3) CHANGE OF ATTORNEY.

### § 6190. When and how made.

The attorney in an action or special proceeding may be changed, at any time before judgment or final determination, as follows:

First. Upon his own consent, filed with the clerk or entered upon the minutes; or,

Second. Upon the order of the court or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney are paid by the party asking such change to be made.

(G. S. 1866, c. 88, § 12; G. S. 1878, c. 88, § 12.)

### § 6191. Notice of change to be given.

When an attorney is changed, as provided in the last section, written notice of the change, and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then, he is bound to recognize the former attorney.

(G. S. 1866, c. 88, § 13; G. S. 1878, c. 88, § 13.)

### § 6192. Death of attorney—Notice to appoint successor.

When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney shall, at least thirty days before any further proceedings against him, be required by the adverse party, by written notice, to appoint another attorney; provided, that if such party is dead, or absent from the state, such notice shall be served by filing the same with the clerk of the court where the action is pending.

(G. S. 1866, c. 88, § 14; G. S. 1878, c. 88, § 14.)

Under this section, the adverse party is, until written notice of substitution is given, bound to recognize the former attorney. *McFarland v. Butler*, 11 Minn. 72, (Gil. 42); *McFarland v. Butler*, 11 Minn. 77, (Gil. 44.)

### § 6193. Same—Proceedings when client is nonresident.

Whenever, by reason of death or otherwise, the attorney for a party to an action ceases to act as such, and said party is absent from and has no known place of residence within the state, service of notice requiring said party to appoint another attorney, or to appear in person in such action, may be made upon said party by filing the same in such action with the clerk of the court in which the action is pending; and in case such party shall neither appoint an attorney, nor appear in person therein, within thirty days, he shall not be entitled to notice of any subsequent proceedings in such action.

(1866, c. 39, § 1; G. S. 1878, c. 88, § 15.)

## (4) LIEN OF ATTORNEYS.

### § 6194. Extent of lien.

An attorney has a lien for his compensation, whether specially agreed upon or implied, as provided herein:

First. Upon the papers of his client which have come into his possession in the course of his professional employment;

Second. Upon money in his hands belonging to his client;

Third. Upon money in the hands of the adverse party in an action or proceeding in which the attorney was employed, from the time of giving notice of the lien to that party;

Fourth. Upon a judgment, to the extent of the costs included therein, or,

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if there is a special agreement, to the extent of the compensation specially agreed on, from the time of giving notice to the party against whom the judgment is recovered. This lien is, however, subordinate to the rights existing between the parties to the action or proceeding.

(G. S. 1866, c. 88, § 15; G. S. 1878, c. 88, § 16.)

**SUBD. 3.** A notice of attorney's lien, given under this subdivision, for implied compensation, if it fairly inform the party that a lien is claimed, its nature and character, and upon what it is sought to be enforced, is not defective for failing to state the amount. Distinguishing *Forbush v. Leonard*, 8 Minn. 303, (Gil. 267.) *Crowley v. Le Duc*, 21 Minn. 412.

This section is to be liberally construed in advancement of the remedy. *Id.*

The implied compensation for which an attorney can claim a lien is to be measured by the reasonable value of such services, and not merely the statutory costs allowed a prevailing party under §§ 5497, 5498. *Id.*

**SUBD. 4.** An attorney has no lien on a judgment unless there is a special agreement for his compensation. *Forbush v. Leonard*, 8 Minn. 303, (Gil. 267.)

An attorney has no lien on a judgment for costs, without notice to the debtor. *Dodd v. Brott*, 1 Minn. 270, (Gil. 206.)

Where an attorney takes an assignment of a judgment on which he has a lien, his lien is merged. *Id.*

The lien of an attorney for his compensation, upon a judgment, is assignable. *Sibley v. County of Pine*, 31 Minn. 201, 17 N. W. Rep. 357.

Where the attorney has a lien on a judgment collected by the sheriff, the latter must, if so required by the attorney, retain the amount of the lien out of the money collected. *Gill v. Truelsen*, 39 Minn. 373, 40 N. W. Rep. 254.

The attorney's lien on a judgment is superior to the claim of a creditor in an execution levied on the judgment. *Henry v. Traynor*, 42 Minn. 284, 44 N. W. Rep. 11.

A lien cannot be created on a mere right of action for a personal tort. *Hammons v. Great Northern Ry. Co.*, 53 Minn. 249, 54 N. W. Rep. 1108.

See *Wetherby v. Weaver*, 51 Minn. 73, 52 N. W. Rep. 970.

(5) SUMMARY POWER OF THE COURT OVER ATTORNEYS.

§ 6195. Refusal of attorney to pay over moneys, etc.

When an attorney refuses to deliver over money or papers to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or, if no action was prosecuted, then by order of the district court of the county in which such attorney resides, or by the supreme court, to do so within a specified time, or show cause why he should not be punished for contempt.

(G. S. 1866, c. 88, § 16, as amended 1877, c. 35, § 1; G. S. 1878, c. 88, § 17.)

§ 6196. Same—Proceedings when attorney claims lien.

If, however, the attorney claims a lien upon the money or papers, under the provisions of this chapter, the court may:

First. Impose, as a condition of making the order, that the client give security, in a form and amount to be directed, to satisfy the lien when determined in an action; or,

Second. Summarily inquire into the facts on which the claim of a lien is founded, and determine the same; or,

Third. Direct the trial of the controversy by a jury, or refer it, and, upon the verdict or report, determine the same, as in other cases.

(G. S. 1866, c. 88, § 17; G. S. 1878, c. 88, § 18.)

(6) REMOVAL OR SUSPENSION OF ATTORNEYS AND COUNSELLORS.

§ 6197. In what cases.

An attorney and counsellor may be removed or suspended by the supreme court, at a general term thereof, for either of the following causes, arising after his admission to practice:

First. Upon his being convicted of felony, or of a misdemeanor involving moral turpitude, in either of which cases the record of his conviction is conclusive evidence;

Second. Upon its being shown, to the satisfaction of the court, that he has knowingly signed a frivolous pleading, or has been guilty of any other deceit or wilful misconduct in his profession;

Third. For a wilful disobedience or violation of the order of court, requiring him to do or forbear an act connected with or in the course of his profession;

Fourth. For a wilful violation of any of the provisions of section five.

(G. S. 1866, c. 88, § 18; G. S. 1878, c. 88, § 19.)

**SUBD. 1.** See *In re Arctander*, 26 Minn. 25, 1 N. W. Rep. 43.

**SUBD. 4.** The reading to the court, on a motion to change the venue, on the ground of prejudice in the judge, of an affidavit, in the words of the act of 1858, is not *per se* a contempt of court. *Ex parte Curtis*, 3 Minn. 274, (Gil. 188.)

**§ 6198. Proceedings, how instituted.**

The proceedings to remove or suspend an attorney and counsellor, as provided in the last section, may be taken by the court of its own motion, for matter within its knowledge, or upon the information of another.

(G. S. 1866, c. 88, § 19; G. S. 1878, c. 88, § 20.)

**§ 6199. Accusation to be in writing, when.**

If the proceeding is upon the information of another, the accusation shall be in writing, and presented to the court.

(G. S. 1866, c. 88, § 20; G. S. 1878, c. 88, § 21.)

**§ 6200. Accusation to be verified.**

The accusation shall state the matter charged, and be verified by the oath of the person making it, or of some other person, to the effect that the charges therein contained are true.

(G. S. 1866, c. 88, § 21; G. S. 1878, c. 88, § 22.)

**§ 6201. Court may order accused to appear and answer.**

After receiving the accusation, the court shall, if in its opinion the case requires it, make an order requiring the accused to appear and answer the accusation, at a specified time in the same or a subsequent term, and cause a copy of the order and of the accusation to be served upon the accused, within a prescribed time before the day appointed in the order.

(G. S. 1866, c. 88, § 22; G. S. 1878, c. 88, § 23.)

**§ 6202. Appearance and answer—Proceedings on default.**

The accused shall appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the court assign another day for that purpose. If he does not appear, the court may proceed and determine the accusation in his absence.

(G. S. 1866, c. 88, § 23; G. S. 1878, c. 88, § 24.)

**§ 6203. Answer, what to contain.**

The accused may answer the accusation, either by objecting to its sufficiency, or denying its truth.

(G. S. 1866, c. 88, § 24; G. S. 1878, c. 88, § 25.)

**§ 6204. Objection to sufficiency of accusation—Denial.**

If he objects to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specified form, it being sufficient if it presents intelligibly the grounds of the objection. If he denies the truth of the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

(G. S. 1866, c. 88, § 25; G. S. 1878, c. 88, § 26.)

**§ 6205. Answer when objection is overruled.**

If an objection to the sufficiency of the accusation is not sustained, the accused shall answer it forthwith.

(G. S. 1866, c. 88, § 26; G. S. 1878, c. 88, § 27.)

**§ 6206. Proceedings on plea of guilty—On denial.**

If the accused pleads guilty or refuses to answer the accusation, the court shall proceed to judgment of removal or suspension. If he denies the matter



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charged, the court shall immediately, or at such time as it may appoint, proceed to try the accusation.

(G. S. 1866, c. 88, § 27; G. S. 1878, c. 88, § 28.)

**§ 6207. On judgment of suspension, etc., accused may make case.**

In case of a judgment of suspension or removal, the accused may, within ten days after it is pronounced, make a case, setting forth the evidence and other proceedings in the matter upon the hearing thereof; which shall be settled by the court in the same manner as a case in a civil action; when settled, it shall be filed by the clerk of the court by which the judgment was given.

(G. S. 1866, c. 88, § 28; G. S. 1878, c. 88, § 29.)

**§ 6208. What papers constitute judgment-roll.**

The following papers shall be annexed together and filed by the clerk within two days after the filing of the case, or within such further time as the court or judge thereof may prescribe:

First. The accusation;

Second. The objections or answers thereto;

Third. The case mentioned in the last section;

Fourth. A copy of the entries upon the minutes of the court, relating to the accusation and the proceedings thereon, including the order of suspension or removal.

(G. S. 1866, c. 88, § 29; G. S. 1878, c. 88, § 30.)

**§ 6209. Suspension—Order—Copy to be sent to supreme court.**

Any court, except a justice's court, may suspend an attorney and counsellor from practising therein, for any of the causes mentioned in section eighteen, for a period not beyond the adjournment of the next general term of the supreme court; the order of suspension shall state the cause thereof, and be entered upon the minutes; and a certified copy thereof transmitted by the court by which it is made to the next general term of the supreme court, which may proceed thereon against the person suspended, in the manner provided in this chapter.

(G. S. 1866, c. 88, § 30; G. S. 1878, c. 88, § 31.)

See *In re Arctander*, 26 Minn. 25, 23, 1 N. W. Rep. 43; *In re Brown*, 32 Minn. 443, 445, 21 N. W. Rep. 474.

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