

JOSE GEROMO, PETITIONER, VS. COMMISSION ON ELECTIONS, HONO-RABLE ASAALI S. ISNANI AND PACIANO GUILLEN, RESPONDENTS.

G.R. No. 58578. November 02, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Sought in this Petition for Certiorari with Preliminary Injunction are the annulment of 1) the Decision of respondent Judge, dated 18 December 1980, annulling the proclamation of petitioner, Jose Geromo, as elected Mayor of Molave, Zamboanga del Sur; and 2) the Resolutions of respondent Commission on Elections (COMELEC) of 6 July 1981 affirming said Decision, and of 12 October 1981 denying reconsideration.

In the local election held on 30 January 1980, petitioner Jose Geromo, a mayoralty candidate under the banner of the Concerned Citizens Aggrupation (CCA for brevity), garnered 4,993 votes as against 4,886 votes obtained by his opponent, private re-spondent Paciano Guillen, the candidate of the Kilusan ng Bagong Lipunan (KBL) for the same position. On 31 January 1980, petitioner was proclaimed duly elected Mayor of Molave, with a plurality of 107 votes over private respondent and has assumed office.

On 5 February 1980, private respondent filed an election protest against petitioner with the Court of First Instance of Zamboanga del Sur, Branch V, at Pagadian City, docketed as Election Case No. 62, to which petitioner filed an Answer with Counter-protest. Out of the 45 voting centers of the muni-cipality, private respondent's protest originally involved 41 voting centers, while petitioner's counter-protest involved 20 voting centers. In the course of the proceedings before the Trial Court, however, pri-vate respondent limited his protest to 16 voting centers (Voting Centers 1, 4, 5, 6, 7, 8, 10, 14, 15, 20, 20-A, 28, 34, 35, 38 and 39), and discontinued his protest as to the rest of the voting centers. For his part, petitioner limited his counter-protest to only 10 voting centers (Voting Centers Nos. 2, 12, 13, 24, 27, 29, 30, 36, 37 and 41) out of the original 20 voting centers.

On 18 December 1980, the Trial Court rendered a Decision finding that private respondent Guillen ob-tained a total of 5,219 votes as against 4,952 votes for petitioner Geromo, or a margin of 267 votes, tabu-lated briefly thus:

"Summary of votes ob-tained by the parties in the protested and counter protested voting centers:"

Guillen Geromo

Sub-total 3,626 2,482

"Votes obtained by the parties in the un-opened ballot boxes as shown in Exhibit 'B', also marked as Exhibit '1' (Certi-fication issued by Election Registrar Naty S. Pabatao):"

Sub-total 1,593 2,470

Grand Total 5,219 4,952

Difference 267

The dispositive portion of the Trial Court Decision reads:

"WHEREFORE, all the foregoing considered Judgment is hereby rendered:

"1. Declaring Paciano Guillen the duly elected Mayor of Molave, Zamboanga del Sur in the election of January 30, 1980;

"2. Annulling the proclamation of Jose Geromo as the elected mayor of Molave in the January 30, 1980 election; and

"3. Ordering the protestee to pay the costs."[1]

Petitioner appealed to the COMELEC (Election Case No. 10-81), which affirmed the Decision of the Trial Court in a Resolution dated 6 July 1981[2], with the decretal portion reading:

"In view of all the foregoing consideration, this Commission (Second Division) RESOLVES (a) to sustain, as it is hereby sustained, the Decision and the Judgment rendered by the trial court 'declaring Protestant-Appellee Paciano Guillen the duly elected Mayor of Molave, Zamboanga del Sur in the election of January 30, 1980' with a plurality of Two Hundred Sixty-Seven (267) votes, crediting him with Five Thousand Two Hundred Nineteen (5,219) votes as against Four Thousand Nine Hundred Fifty Two (4,952) votes for Protestee-Appellant Jose Geromo; 'annulling the proclamation of Jose Geromo as the elected Mayor of Molave, Zamboanga del Sur in the January 30, 1980 election; ordering the Protestee to pay the cost;' and (b) to order, as it is hereby ordered, that, after this Resolution shall have become final, Protestee-Appellant Jose Geromo shall vacate the position of Mayor of Molave, Zamboanga del Sur, and Protestant-Appellee Paciano Guillen shall assume said position and perform the functions of said office."[3]

Petitioner moved for reconsideration but the same was denied in the COMELEC Resolution dated 12 October 1981.

On 29 October 1981, the instant Petition was filed alleging grave abuse of discretion on the part of public respondents in the rendition of their re-spective Resolutions/Decision. We required respondents to submit an Answer, which they have done.

The issues posited by petitioner are practically identical to those in his Motion for Reconsideration before the COMELEC. And while they are mostly factual, we shall consider them nonetheless, as set forth and in the same sequence as in the Petition.

Petitioner raises two crucial issues, namely: (I) the admissibility of Exhibit "B", and (II) the validity of the results in voting centers Nos. 1, 7, 8, 10, 12, 34, and 36.

I

Admissibility of Exhibit "B"

Exhibit "B" of private respondent, also marked as Exhibit "1" of petitioner, is a certification issued by the Election Registrar dated 13 March 1980, attesting to the votes obtained by both parties in the elections of January 30, 1980. For clarity, only the votes in the unopened ballot boxes in the 19 voting centers not involved in the protest or counter-protest are hereunder reproduced:

"TO WHOM IT MAY CONCERN:

This is to certify that the following are the results in all Voting Centers showing the votes obtained by

Paciano Guillen and Jose Geromo, in the January 30, 1980 Elections:

Voting Center No.

For Protestant

For Protestee

Paciano Guillen

Jose Geromo

3

80

91

10-A

115

146

11

32

77

16

58

76

17

54

127

17-A

74
162
18
77
85
19
190
207
21
145
185
22
89
174
23
68
134

23-A

63
122
25
83
138
26
100
174
31
77
135

32

53

106

33

81

143

40

53

21

42

101

167

1,593

2,470

I hereby certify that the above is true and correct.

March 13, 1980.

(Sgd.) Naty S. Pabatao

(T) NARY S. PABATAO

Election Registrar"[4]

As indicated heretofore, the tabulation appearing in the foregoing certification plus the results obtained from the 26 voting centers subjected to revision by the Trial Court formed the basis of the latter's judgment.

Petitioner now questions the admissibility of Exhibit "B" for two reasons: (1) it is imputed that it never reached respondent COMELEC before it rendered the questioned Resolutions thereby creating doubt as to whether or not the COMELEC really had the opportunity to examine it closely before it ruled that said Exhibit constitutes primary evidence; and (2) Exhibit "B" is incompetent evidence, the primary and best evidence being the election returns themselves. Further, it cannot provide the basis for the Trial Court's proclamation of private respondent as duly elected Mayor of Molave because under Section 169 of the Election Code the only basis for proclamation of a winning candidate is the certificate of canvass supported by a statement of the votes received by each candidate in each voting center.

Petitioner's submission must be rejected. In the absence of convincing proof that the Deputy Clerk of Court of the Trial Court failed to forward Exhibit "B" to the COMELEC, the presumption that official duty has been regularly performed prevails.[5]

Section 169 of the Election Code, invoked by petitioner, provides in part:

"SEC. 169. Canvass by the board. –x x x x x x

"The board shall prepare a certificate of canvass supported by a statement of the votes received by each candidate in each voting center in the region and on the basis thereof, shall proclaim as elected the candidates who obtained the high-est number of votes cast in the region."

Clearly, the said provision applies to an ori-ginal canvass of election returns immediately after a regular election held. Where, as in this case, an election protest is involved, the combined results of the revision of ballots ordered by the Trial Court and the results of the voting in the unopened ballot boxes from the uncontested voting centers, as shown by Exhibit "B", became the proper basis for ascer-taining the results of the contested election. The judgment of the Trial Court was not based on Exhibit "B" alone as claimed by petitioner.

Moreover, official records made in the perform-ance of his duty by a public officer of the Philippines or by a person in the performance of a duty especially enjoined by law is prima facie evidence of the facts therein stated.[6]

No grave abuse of discretion can be laid at the door of the COMELEC when, after it had examined Exhibit "B", it concluded:

"While it is true that Exhibit 'B' is a certification signed and issued by the Election Registrar as Chairman of the Board of Canvassers, it is equally true that after our proper verification and checking, we found Exhibit 'B' as a correct and exact certification showing the number of votes received by candidates Paciano Guillen and Jose Geromo for every barangay and voting center and the respective totals thereof which are the same figures appearing in the certificate of canvass and statement of votes signed by the Board of Canvassers and officially submitted by them to this Commission. (Italics supplied)"[7]

The foregoing pivotal confirmation with offi-cially canvassed returns undertaken by respondent COMELEC was within its competence and was but pur-suant to its broad powers to ascertain the true results of the election by means available to it. For the attainment of that end it should not be held strictly bound by the rules of evidence.[8]

Nor was petitioner denied due process for not having been given the chance "to question the truth or veracity" of the COMELEC records. Those are pub-lic records and if he had wanted to, he could have done so and the COMELEC would surely not have denied him the opportunity. It is to be noted also that Exhibit "B" was marked and presented in the lower Court and could have been verified even then. Fur-thermore, the complete document contained the official results of the voting for every barangay and voting center irrespective of whether they were contested or not. In fact, the totals showed the original returns of 4,993 votes for petitioner and 4,886 votes for private respondent, the figures on the basis of which petitioner was proclaimed elected. Surely, segregating the data from the unprotested voting cen-ters for purposes of resolving the election protest can hardly be objected to.

The aforesaid COMELEC conclusion also shows that, contrary to petitioner's contention, Exhibit "B" was actually received at and examined by re-spondent COMELEC. Neither was it considered by the COMELEC "in lieu of election returns" as peti-tioner claims. Exhibit "B" was confirmed correct by the statement of votes on record in the Commission.

II

Validity of results in Voting Centers Nos. 1, 7, 8, 10, 12, 13, and 36.

Petitioner contests the results in the above voting centers on grounds of alleged various irre-gularities committed during the voting and, in certain instances, after the termination of the counting of votes, which allegedly vitiated

the integrity of the results.

"1. Rampant and illegal participation of substitute voters."

Petitioner claims that in Voting Center No. 12, the use of substitute voters was resorted to although these substitute voters were allegedly disguised as "assistors" to handicapped and illiterate voters, and were unlawfully recognized as such by the Citizens Election Committee.

In view of the conflicting reports of the hand-writing experts presented by petitioner-pro-testee and private respondent-protestant, the Trial Court, at its own instance, opened the ballot boxes of voting centers Nos. 7, 8, 10, 12, 34 and 36, and grouped the ballots in accordance with the groupings made by Wilfredo Espina, petitioner's handwriting expert. In the language of the Trial Court, after a "meticulous examination, comparison and analysis of the ballots", as grouped, it arrived at the following findings:

"3. The following ballots were written by two persons each:

(P-12)4, (P-12)6, (P-12)13 and (P-12)17.

"4. All the other ballots in voting centers Nos. 7, 8, 10, 12, 34 and 36 were prepared and written by as many persons as there are ballots. The entries and/or writings in a few ballots look similar but they are not identical"[9]

The common authorship of some of the ballots in certain voting centers was explained by the Trial Court thus after evidence aliunde was received:

"From the testimony of all these witnesses, especially those of Robustiano Lopez, Crispin Camay, Porferio Salvacion, Rosendo Tayuran and Rosita Derigi, it is clear that illiterate voters were assisted by persons of their choice and that there were six persons who gave such assistance. These six did so upon request of the barrio people who were the duly registered voters of voting center No. 12. This fact is also confirmed by Hilario Bahinting, chairman of voting center No. 12. The persons assisting failed to sign the necessary document for some of those they helped because the only form given to the Citizens Election Committee was already filled up and no other form was available."[10]

"All these witnesses further testified that although they were not the ones who filled up their ballots, they were the ones who handed said ballots to the chairman to be dropped into the ballot box and subsequently they signed and affixed their thumb-marks".[11]

The act of respondent Court in disregarding the opinion of the handwriting experts presented in Court by the parties and in conducting its own examination and making its own findings does not constitute grave abuse of discretion. Well-settled is the rule that

"the court may not be made to swallow opinions of experts 'as is' especially when its attention is called to an error in the expert's conclusions, which the Court was able to confirm".[12]

The procedure of lending assistance to illiterate and handicapped voters in the preparation of ballots is specifically spelled out in Section 141 of the 1978 Election Code, which provides:

"SEC. 141. Preparation of ballots for illiterate and disabled persons. – A registered voter who is illiterate or physically unable to prepare the ballot by himself may choose a person of his confidence to assist him in the preparation of his ballot, preferably a relative by affinity or consanguinity within the fourth civil degree. The person thus chosen shall prepare the ballot for the illiterate or disabled voter inside the voting booth. The person assisting shall bind himself in a formal document to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him."

The findings of the Trial Court sustaining the validity of the questioned voting in Voting Center No. 12, as upheld by the COMELEC, therefore, are in order.

"2. a) Reopening of the ballot boxes after the counting of the votes in violation of law."

Petitioner avers that after the counting of votes and without having completed the required accomplished election forms, the Citizens Election Committee allegedly left the Voting Center and took the ballot box of Voting Center No. 1 to the boarding house of one of its members, while that of Voting Center No. 8 was taken to the municipal building where the said Committee opened the ballot boxes and brought out the election forms for completion.

These general averments, however, remained un-substantiated by competent evidence. In respect of Voting Center No. 1, the COMELEC, in its Resolution of July 6, 1981, ruled:

"We find no evidence on record upon which to base a ruling or finding that the election in Voting Center No. 1 was null and void to justify the setting aside or nullification of the ballots or votes in said voting center. On the contrary, the witnesses of the protestee-appellant (herein petitioner), Alfredo Pergamino and Melquiades Anghag who were chairman and member, respective-ly, of the Citizens Election Committee for Voting Center No. 1 testified that the voting and conduct of the election in said voting center No. 1 were peace-ful and regular, the results contained in the tally board and election returns prepared and submitted by them were true and correct."[13]

Similarly, the voting and conduct of election in Voting Center No. 8 was neither tainted with irre-gularity. The Trial Court observed:

"1. In voting center No. 8:

x x x

The evidence for the Protestee, however, show the election was peaceful; x x x

"The evidence on record further shows that the security seal (self-locking metal) seal issued by the Municipal treasurer of Molave to the Citizens Election Committee of Voting Center No.8 bears SN 848101 (Exhibit '73-A'). When examined by the Committee on revision of ballots, appointed by the Court, the ballot box for said voting center still bore the same security seal, intact. The ballot box does not have any sign of tampering. No testimonial evidence was introduced to show that only a few persons wrote on the ballots. On the contrary Mrs. Panco, poll clerk, testified that only registered voters voted in this precinct."[14]

"(b) Loss of unused official ballots."

Petitioner alleges that fifty (50) unused official ballots with Serial No. 0171100-K to 071150-K were lost and remained unaccounted for by the Citizens Election Committee.[15]

Even assuming, arguendo, however, that the alleged fifty (50) unused official ballots were actually lost, considering respondent Court's find-ings that there were no anomalies committed in Voting Center No. 8, and that the alleged loss of unused official ballots could not possibly affect the result of the elections in the entire munici-pality, said loss would be insufficient basis to declare null and void the election returns in the said precinct. It should also be noted that peti-tioner raised said contention for the first time in his Motion for Reconsideration of the COMELEC Resolution of 6 July 1981.[16]

"3. Vote-buying

Petitioner quotes the following portion of the Trial Court's Decision to support his charge of massive vote-buying:

"On the matter of vote-buying, two witnesses testified that they were given envelopes containing a carbon paper and P5.00 inside by Tarsing and they were asked to vote KBL and use the envelope as cushion for their ballots. Others testified that they confiscated similar envelopes (Exhibits '56', '56-A' to '56-R') which they turned over to the PC in the afternoon of election day. x x x (p. 111, Decision)"[17]

As found by the Trial Court, however, while the evidence shows that petitioner's watchers in-formed the CEC of the presence of voters, who allegedly received money in consideration of their votes, there is no proof that said watchers made formal challenges pursuant to the procedure out-lined in Section 145 of the 1978 Election Code, which provides:

"SEC. 145. Challenge based on certain illegal acts. - Any voter, candidate, or watcher may challenge any voter offering to vote on the ground that the challenged person has received or expects to receive, has paid, offered or promised to pay, has contributed, offered or promised to contribute money or anything of value as consideration for his vote or for the vote of another; that he has made or received a promise to influence the giving or withholding of any such vote; or that he has made a bet or is inte-rested directly or indirectly in a bet which depends upon the result of the election. The challenged person shall take an oath before the committee that he has not committed any of the acts alleged in the challenge. Upon the taking of such oath, the challenge shall be dismissed and the challenged voter shall be allowed to vote, but in case of his refusal to take such oath, the challenge shall be sustained and he shall not be allowed to vote."

Additionally, the Trial Court found and con-cluded that only more or less twenty (20) persons were allegedly found in possession of envelopes and that their ballots could not be traced and segregated from among the more than 400 ballots cast so that these ballots must be included in the recount and appreciation of the ballots cast in Voting Center No. 8.

"The testimony of witnesses with regard to alleged schemes on the part of the opposing party to influence the po-pular will by means of bribery and the purchase of votes, must be viewed with caution, and unless strongly corroborated by other legally admissible evidence, is not sufficient to determine the results of a popular election"[18]

"4. Tampering of ballot box"

Petitioner asks of this Tribunal that the results from Voting Center No. 10 be disregarded and excluded on the ground that the ballot box therefrom was tam-pered after it left the hands of the CEC. Petitioner cites the testimony of the CEC Chairman, Crisanta Mantuha, that the keys brought to the Court were not the keys she delivered to the election registrar of the municipality (p. 113, Decision), and after the padlocks were sawed off on order of the Court and the box opened, she discovered that the order of placement of the various documents inside was no longer the same as when she closed the same (p. 114, Decision), aside from the fact that some election forms therein did not bear their signatures (T.S.N., Board of Revisors, Voting Center 10)."[19]

But the Trial Court did not give credence to the testimony of Crisanta Mantuha. Respondent Judge, who had the opportunity to actually see the conditions of the ballot box in question, observed that there was no tampering. As the Judge explained:

"When opened, the contents of the ballot box were well arranged but Crisanta Mantuha claimed that they were no longer in the same order as she placed them in the ballot box. Her testimony seems to imply that the ballot box was tampered with.

The testimony of Crisanta Mantuha, however, is unbelievable. In the first place, the external and internal condi-tion of the ballot box were normal; in the second place, even if presuming arguendo that the keys delivered to the Court were not the same keys that Cri-santa Mantuha delivered to the election registrar of Molave, they, by

themselves, do not prove that the ballot box was even opened at any time after the same was turned over to the Municipal Treasurer of Molave and before it was brought to the Court. On the contrary, the three keys merely show that they could not successfully be used to open the ballot box; and, finally, no evidence was introduced to show how the keys were changed, if such was the case." [20]

And, as to the credibility of said witness, respondent Judge, who had the opportunity to hear her and observe her demeanor on the witness stand, had occasion to observe:

"x x x When Crisanta Mantuha was on the witness stand she was visibly uneasy and restless, if not on the verge of trembling. The person who substituted the keys to the ballot box of voting center No. 10 must have a strong motive. This motive could be to prevent the opening of the said ballot box. Crisanta Mantuha is not devoid of such motive." [21]

The above observations of respondent Judge, upheld by the COMELEC, have not been shown to be unfounded. The highest degree of respect is accorded to the lower Court on matters of credibility. [22]

"5. Clear violations of the rules in the appreciation of ballots."

Respondent Court and the COMELEC did not invalidate the ballots on which the spaces for Sangguniang Panlalawigan and Sangguniang Bayan were filled with names of non-candidates (petitioner's Situation A and Situation B) and, instead, considered the votes for those offices as stray. Petitioner contends, however, that the ballots should have been declared marked and disregarded.

Public respondents' findings are in conformity with the rules for the appreciation of ballots.

"SEC. 155. Rules for the appreciation of ballots. - x x x

x x x

"15. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot" (Italics supplied) (1978 Election Code).

It has also been held that in the absence of evidence aliunde that names of non-candidates were intended for purposes of identification, the same shall be considered as stray votes which shall not invalidate the whole ballot. [23] Further, it is a well-settled rule in election contests that the marks which shall be considered sufficient to invalidate the ballots are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter. [24]

Neither can public respondents be assailed for considering the ballots on which "KBL" was written on the wrong spaces, without other writings, (petitioner's Situation C) as valid block votes for the entire KBL ticket. This is pursuant to Section 155 of the 1978 Election Code reading:

"SEC. 155. Rules for the appreciation of ballots

x x x

"26. If a voter has written in the proper space of the ballot the name of a political party, group or aggregation which has nominated official candidates, a vote shall be counted for each of the official candidates of such party, group or aggregation" (1978 Election Code).

Although written in the wrong spaces, the intention of the voters to vote for the entire ticket is clear. No evidence aliunde had been presented below to prove that the voters intended to identify their ballots or themselves, or otherwise violate the secrecy of the ballot.

In fine, we find no grave discretion on the part of public respondents in rendering the challenged Decision and Resolutions. On the contrary, the respective findings of public respondents are duly supported by the evidence. The 178-page Decision of respondent Judge Asali S. Isnani shows that he had acted meticulously, thoroughly, and judiciously in the procedure he had followed, in his analysis of the evidence and in the resolution of the issues before him. The internal and external condition of the ballot boxes protested was examined. The ballots cast for each party objected by the other in the voting centers involved were looked into and the objections ruled upon. The recount and appreciation of the ballots were properly made. The testimonies of the witnesses were properly evaluated. Respondent COMELEC was no less assiduous in the disposition of the appeal before it.

We have noted the appeal addressed to the Court signed by residents of Molave, Zamboanga del Sur, in support of petitioner Jose Geromo. Upon the evidence, however, the respective judgments of public respondents has to be upheld.

WHEREFORE, the Petition for Certiorari is dismissed, and the questioned Court of First Instance Decision dated 18 December 1980, and the Resolutions of the Commission on Elections dated 6 July 1981 and 12 October 1981, respectively, are hereby affirmed. The Temporary Restraining Order, dated 3 November 1981, is hereby ordered lifted.

No costs.

SO ORDERED.

Makasiar, (Acting C.J.), Concepcion, Jr., Guerrero, De Castro, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., and Teehankee, J., on official leave.

Aquino, J., in the result.

Abad Santos, J., no part.

[1] p. 220, Rollo.

[2] Second Division, composed of Presiding Commissioner Domingo C. Pabalate, Commissioners Noli M. Sagadraca, ponente, and Luis L. Lardizabal, who wrote a separate concurring opinion.

[3] p. 233, Rollo.

[4] p. 5, Rollo and pp. 4-5, Answer.

[5] Sec. 5(m), Rule 131, Rules of Court; *Cornejo vs. Secretary of Justice*, 57 SCRA 664 (1974); *Aguador vs. Enerio*, 37 SCRA 142 (1971).

[6] Sec. 38, Rule 130, Rules of Court.

[7] pp. 255-256, Rollo.

[8] Rule 143, Rules of Court; *Asis vs. Ilao*, 114 Phil. 296 (1962).

[9] p. 151, Rollo.

[10] pp. 119-120, CFI Decision.

[11] p. 116, *ibid*.

[12] Protacio vs. De Leon, 118 Phil. 1312 (1963).

[13] p. 5, Comelec Resolution, July 6, 1981, p. 226, Rollo.

[14] pp. 110-111, CFI Decision.

[15] p. 19, Rollo.

[16] p. 247, *ibid*.

[17] p. 20, Petition, p. 21, Rollo.

[18] Cruz vs. De Guzman, 54 Phil. 32 (1929).

[19] p. 21, Petition.

[20] p. 114, CFI Decision.

[21] p. 114, *ibid*.

[22] People vs. Arizala, 112 SCRA 615 (1982).

[23] Tajanlangit vs. Cazenias, 115 Phil. 564 (1962); Trajano vs. Inciso, 19 SCRA 341 (1967); Lontoc vs. Pineda, 64 SCRA 681, 717 (1975).

[24] Monteza vs. Court of Appeals, 20 SCRA 773 (1967); Inguito vs. Court of Appeals, 21 SCRA 1015 (1967).

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