



ANNO DECIMO NONO & VICESIMO

# VICTORIÆ REGINÆ.

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An Act to facilitate Leases and Sales of Settled Estates. [29th July 1856.]

**W**HEREAS it is expedient that the Court of Chancery should have Power in certain Cases to authorize Leases and Sales of Settled Estates where it shall deem that such Leases or Sales would be proper and consistent with a due Regard for the Interests of all Parties entitled under the Settlement; and it is also expedient that Persons in possession of Land for certain limited Interests should have Power to grant Agricultural or Occupation Leases thereof, at Rackrent, for a reasonable Period: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. The Word "Settlement," as used in this Act, shall signify any Act of Parliament, Deed, Agreement, Copy of Court Roll, Will, or other Instrument, or any Number of such Instruments, under or by virtue of which any Hereditaments of any Tenure or any Estates or Interests in any such Hereditaments stand limited to or in trust for any Persons, by way of Succession, including any such Instruments

Interpre-  
tation  
of certain  
Terms.

*Leases and Sales of Settled Estates.*

affecting the Estates of any One or more of such Persons exclusively ; and the Term "Settled Estates," as used in this Act, shall signify all Hereditaments of any Tenure and all Estates or Interests in any such Hereditaments which are the Subject of a Settlement ; and for the Purposes of this Act a Tenant in Tail after Possibility of Issue extinct shall be deemed to be a Tenant for Life.

Power to Court of Chancery to authorize Leases of Settled Estates, subject to certain Conditions.

II. It shall be lawful for the Court of Chancery in *England*, so far as relates to Estates in *England*, and for the Court of Chancery in *Ireland*, so far as relates to Estates in *Ireland*, if it shall deem it proper and consistent with a due Regard for the Interests of all Parties entitled under the Settlement, and subject to the Provisions and Restrictions in this Act contained, to authorize Leases of any Settled Estates, or of any Rights or Privileges over or affecting any Settled Estates, for any Purpose whatsoever, whether involving Waste or not, provided the following Conditions be observed :

First, every such Lease shall be made to take effect in possession at or within One Year next after the making thereof, and shall be for a Term of Years not exceeding for an Agricultural or Occupation Lease Twenty-one Years, for a Mining Lease, or a Lease of Water, Water Mills, Wayleaves, Waterleaves, or other Rights or Easements, Forty Years, and for a Building Lease Ninety-nine Years, or where the Court shall be satisfied that it is the usual Custom of the District and beneficial to the Inheritance to grant Building Leases for longer Terms, then for such Term as the Court shall direct :

Secondly, on every such Lease shall be reserved the best Rent, or Reservation in the Nature of Rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener, without taking any Fine or other Benefit in the Nature of a Fine :

Thirdly, where the Lease is of any Earth, Coal, Stone, or Mineral, a certain Portion of the whole Rent or Payment reserved shall be from Time to Time set aside and invested as herein-after mentioned ; namely, when and so long as the Person for the Time being entitled to the Receipt of such Rent is a Person who by reason of his Estate, or by virtue of any Declaration in the Settlement, is entitled to work such Earth, Coal, Stone, or Mineral for his own Benefit, One Fourth Part of such Rent, and otherwise Three Fourth Parts thereof ; and in every such Lease sufficient Provision shall be made to ensure such Application of the afore-said Portion of the Rent, by the Appointment of Trustees or otherwise, as the Court shall deem expedient :

Fourthly, no such Lease shall authorize the felling of any Trees, except so far as shall be necessary for the Purpose of clearing the  
Ground

*Leases and Sales of Settled Estates.*

Ground for any Buildings, Excavations, or other Works authorized by the Lease:

Fifthly, every such Lease shall be by Deed, and the Lessee shall execute a Counterpart thereof; and every such Lease shall contain a Condition for Re-entry on Nonpayment of the Rent for a Period not less than Twenty-eight Days after it becomes due.

III. Subject and in addition to the Conditions herein-before mentioned, every such Lease shall contain such Covenants, Conditions, and Stipulations as the Court shall deem expedient with reference to the special Circumstances of the Demise.

Leases may contain special Covenants.

IV. The Power to authorize Leases conferred by this Act shall extend to authorize Leases either of the whole or any Parts of the Settled Estates, and may be exercised from Time to Time.

Parts of Settled Estates may be leased.

V. Any Leases granted under this Act may be surrendered, either for the Purpose of obtaining a Renewal of the same or not; and the Power to authorize Leases conferred by this Act shall extend to authorize new Leases of the whole or any Part of the Hereditaments comprised in any surrendered Lease.

Leases may be surrendered and renewed.

VI. The Power to authorize Leases conferred by this Act shall extend to authorize preliminary Contracts to grant any such Leases; and any of the Terms of such Contracts may be varied in the Leases.

Power to authorize Leases to extend to preliminary Contracts.

VII. The Power to authorize Leases conferred by this Act may be exercised by the Court, either by approving of particular Leases, or by ordering that Powers of leasing, in conformity with the Provisions of this Act, shall be vested in Trustees in manner hereinafter mentioned.

Mode in which Leases may be authorized.

VIII. When Application is made to the Court, either to approve of a particular Lease, or to vest any Powers of leasing in Trustees, the Court shall require the Applicant to produce such Evidence as it shall deem sufficient to enable it to ascertain the Nature, Value, and Circumstances of the Estate, and the Terms and Conditions on which Leases thereof ought to be authorized.

What Evidence to be produced on an Application to authorize Leases.

IX. When a particular Lease or Contract for a Lease has been approved by the Court, the Court shall direct what Person or Persons shall execute the same as Lessor; and the Lease or Contract executed by such Person or Persons shall take effect in all respects as if

After Approval of a Lease, Court to direct who shall be the Lessor.

*Leases and Sales of Settled Estates.*

if he or they was or were at the Time of the Execution thereof absolutely entitled to the whole Estate or Interest which is bound by the Settlement, and had immediately afterwards settled the same according to the Settlement, and so as to operate (if necessary) by way of Revocation and Appointment of the Use, or otherwise as the Court shall direct.

Powers of leasing may be vested in Trustees.

X. Where the Court shall deem it expedient that any general Powers of leasing any Settled Estates conformably to this Act should be vested in Trustees, it may by Order vest any such Power accordingly, either in the existing Trustees of the Settlement or in any other Persons; and such Powers, when exercised by such Trustees, shall take effect in all respects as if the Power so vested in them had been originally contained in the Settlement, and so as to operate (if necessary) by way of Revocation and Appointment of the Use, or otherwise as the Court shall direct; and in every such Case the Court, if it shall think fit, may impose any Conditions as to Consents or otherwise on the Exercise of such Power, and the Court may also authorize the Insertion of Provisions for the Appointment of new Trustees from Time to Time for the Purpose of exercising such Powers of leasing as aforesaid.

Court may authorize Sales of Settled Estates, and of Timber.

XI. It shall be lawful for the Court of Chancery in *England*, so far as relates to Estates in *England*, and for the Court of Chancery in *Ireland*, so far as relates to Estates in *Ireland*, if it shall deem it proper and consistent with a due Regard for the Interests of all Parties entitled under the Settlement, and subject to the Provisions and Restrictions in this Act contained, from Time to Time to authorize a Sale of the whole or any Parts of any Settled Estates or of any Timber (not being ornamental Timber) growing on any Settled Estates; and every such Sale shall be conducted and confirmed in the same Manner as by the Rules and Practice of the Court for the Time being is or shall be required in the Sale of Lands sold under a Decree of the Court.

Consideration for Land sold for Building may be a Fee-farm Rent.

XII. When any Land is sold for Building Purposes it shall be lawful for the Court, if it shall see fit, to allow the whole or any Part of the Consideration to be a Rent issuing out of such Land, which may be secured and settled in such Manner as the Court shall approve.

Minerals, &c. may be excepted from Sales.

XIII. On any Sale of Land any Earth, Coal, Stone, or Mineral may be excepted, and any Rights or Privileges may be reserved, and the Purchaser may be required to enter into any Covenants, or submit to any Restrictions, which the Court may deem advisable.

XIV. It

*Leases and Sales of Settled Estates.*

XIV. It shall be lawful for the Court of Chancery in *England*, so far as relates to Estates in *England*, and for the Court of Chancery in *Ireland*, so far as relates to Estates in *Ireland*, if it shall deem it proper and consistent with a due Regard for the Interests of all Parties entitled under the Settlement, and subject to the Provisions and Restrictions in this Act contained, from Time to Time to direct that any Part of any Settled Estates be laid out for Streets, Roads, Paths, Squares, Gardens, or other open Spaces, Sewers, Drains, or Watercourses, either to be dedicated to the Public or not; and the Court may direct that the Parts so laid out shall remain vested in the Trustees of the Settlement, or be conveyed to and vested in any other Trustees, upon such Trusts for securing the continued Appropriation thereof to the Purposes aforesaid in all respects, and with such Provisions for the Appointment of new Trustees when required, as by the Court shall be deemed advisable.

Court may authorize Dedication of Parts of Settled Estates for Roads, &c.

XV. On every Sale or Dedication to be effected as herein-before mentioned the Court may direct what Person or Persons shall execute the Deed of Conveyance; and the Deed executed by such Person or Persons shall take effect as if the Settlement had contained a Power enabling such Person or Persons to effect such Sale or Dedication, and so as to operate (if necessary) by way of Revocation and Appointment of the Use, or otherwise as the Court shall direct.

How Sales and Dedications are to be effected under the Direction of the Court.

XVI. Any Person entitled to the Possession or to the Receipt of the Rents and Profits of any Settled Estates for a Term of Years determinable on his Death, or for an Estate for Life or any greater Estate, may apply to the Court, by Petition in a summary Way, to exercise the Powers conferred by this Act.

Application by Petition to exercise Powers conferred by this Act.

XVII. Subject to the Exception contained in the next Section, every Application to the Court must be made with the Concurrence or Consent of the following Parties; namely,

With whose Consent such Application to be made.

Where there is a Tenant in Tail under the Settlement in existence, and of full Age, then the Parties to concur or consent shall be such Tenant in Tail, or if there is more than One such Tenant in Tail then the first of such Tenants in Tail, and all Persons in existence having any beneficial Estate or Interest under or by virtue of the Settlement prior to the Estate of such Tenant in Tail, and all Trustees having any Estate or Interest on behalf of any unborn Child prior to the Estate of such Tenant in Tail;

And in every other Case the Parties to concur or consent shall be all the Persons in existence having any beneficial Estate or Interest under or by virtue of the Settlement, and also all Trustees having any Estate or Interest on behalf of any unborn Child.

*Leases and Sales of Settled Estates.*

Petition may be granted without Consent, saving Rights of non-consenting Parties.

XXVIII. Provided nevertheless, That unless there shall be a Person entitled to an Estate of Inheritance whose Consent or Concurrence shall have been refused or cannot be obtained, it shall be lawful for the Court, if it shall think fit, to give effect to any Petition, subject to and so as not to affect the Rights, Estate, or Interest of any Person whose Consent or Concurrence has been refused or cannot be obtained, or whose Rights, Estate, or Interest ought in the Opinion of the Court to be excepted.

Notice of Application to be served on all Trustees, &c.

XIX. Notice of any Application to the Court under this Act shall be served on all Trustees who are seised or possessed of any Estate in trust for any Person whose Consent or Concurrence to or in the Application is hereby required, and on any other Parties who in the Opinion of the Court ought to be so served, unless the Court shall think fit to dispense with such Notice.

Notice of Application to be given in Newspapers.

XX. Notice of any Application to the Court under this Act shall be inserted in such Newspapers as the Court shall direct, and any Person or Body Corporate, whether interested in the Estate or not, may apply to the Court of Chancery by Motion for Leave to be heard in opposition to or in support of any Application which may be made to the Court under this Act; and the Court is hereby authorized to permit such Person or Corporation to appear and be heard in opposition to or support of any such Application, on such Terms as to Costs or otherwise, and in such Manner, as it shall think fit.

No Application under this Act to be granted where a similar Application has been rejected by Parliament.

XXI. The Court shall not be at liberty to grant any Application under this Act in any Case where the Applicant, or any Party entitled, has previously applied to either House of Parliament for a Private Act to effect the same or a similar Object, and such Application has been rejected on its Merits, or reported against by the Judges to whom the Bill may have been referred.

Notice of the Exercise of Powers to be given by the Court.

XXII. The Court shall direct that some sufficient Notice of any Exercise of any of the Powers conferred on it by this Act shall be placed on the Settlement or on any Copies thereof, or otherwise recorded in any way it may think proper, in all Cases where it shall appear to the Court to be practicable and expedient, for preventing Fraud or Mistake.

Court may appoint Trustees to receive and apply Monies arising from Sales.

XXIII. All Money to be received on any Sale effected under the Authority of this Act, or to be set aside out of the Rent or Payments reserved on any Lease of Earth, Coal, Stone, or Minerals as aforesaid, may, if the Court shall think fit, be paid to any Trustees of whom it shall approve, or otherwise the same shall be paid into the Bank of *England*

*Leases and Sales of Settled Estates.*

*England or Ireland*, as the Case may be, to the Account of the Accountant General of the Court of Chancery, *ex parte* the Applicant in the Matter of this Act, and in either Case such Money shall be applied as the Court shall from Time to Time direct to some One or more of the following Purposes; (namely,)

- The Purchase or Redemption of the Land Tax, or the Discharge or Redemption of any Incumbrance affecting the Hereditaments in respect of which such Money was paid, or affecting any other Hereditaments subject to the same Uses or Trusts; or
- The Purchase of other Hereditaments to be settled in the same Manner as the Hereditaments in respect of which the Money was paid; or
- The Payment to any Person becoming absolutely entitled.

XXIV. The Application of the Money in manner aforesaid may, if the Court shall so direct, be made by the Trustees (if any) without any Application to the Court, or otherwise upon an Order of the Court upon the Petition of the Person who would be entitled to the Possession or the Receipt of the Rents and Profits of the Land if the Money had been invested in the Purchase of Land.

Trustees may apply Monies, in certain Cases, without Application to Court.

XXV. Until the Money can be applied as aforesaid, the same shall be from Time to Time invested in Exchequer Bills, or in Three *per Centum* Consolidated Bank Annuities, as the Court shall think fit; and the Interest and Dividends of such Exchequer Bills or Bank Annuities shall be paid to the Person who would have been entitled to the Rents and Profits of the Land if the Money had been invested in the Purchase of Land.

Until Money can be applied, to be invested, and Dividends to be paid to Parties entitled.

XXVI. The Court shall be at liberty to exercise any of the Powers conferred on it by this Act, whether the Court shall have already exercised any of the Powers conferred by this Act in respect of the same Property, or not; but no such Powers shall be exercised if an express Declaration or manifest Intention that they shall not be exercised is contained in the Settlement, or may reasonably be inferred therefrom, or from extrinsic Circumstances or Evidence: Provided always, that the Circumstance of the Settlement containing Powers to effect similar Purposes shall not preclude the Court from exercising any of the Powers conferred by this Act, if it shall think that the Powers contained in the Settlement ought to be extended.

Court may exercise Powers repeatedly; but may not exercise them if expressly negatived.

XXVII. Nothing in this Act shall be construed to empower the Court to authorize any Lease, Sale, or other Act beyond the Extent to which in the Opinion of the Court the same might have been authorized in and by the Settlement by the Settlor or Settlers.

Court not to authorize any Act which could not have been authorized by the Settlor.

XXVIII. After

*Leases and Sales of Settled Estates.*

Acts of the Court in professed pursuance of this Act, not to be invalidated.

XXVIII. After the Completion of any Lease or Sale, or other Act, under the Authority of the Court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the Ground that the Court was not hereby empowered to authorize the same; except that no such Lease, Sale, or other Act shall have any Effect against any Person whose Concurrence in or Consent to the Application ought to have been obtained, and was not obtained.

Costs.

XXIX. It shall be lawful for the Court, if it shall think fit, to order that all or any Costs or Expenses of all or any Parties of and incident to any Application under this Act shall be a Charge on the Hereditaments which are the Subject of the Application, or on any other Hereditaments included in the same Settlement, and subject to the same Limitations; and the Court may also direct that such Costs and Expenses shall be raised by Sale or Mortgage of a sufficient Part of such Hereditaments, or out of the Rents or Profits thereof, such Costs and Expenses to be taxed as the Court shall direct.

Power to Lord Chancellor, &c. to make Rules and Orders.

XXX. The Lord Chancellor of *Great Britain*, with the Advice and Assistance of the *English* Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice-Chancellors, or of any Three of them, so far as relates to Proceedings in *England*, and the Lord Chancellor of *Ireland*, with the Advice and Assistance of the *Irish* Master of the Rolls and of the Lord Justice of the Court of Appeal in Chancery in *Ireland*, or of any Two of them, so far as relates to Proceedings in *Ireland*, may, if he shall think fit, from Time to Time make General Rules and Orders for carrying the Purposes of this Act into effect, and for regulating the Times and Form and Mode of Procedure, and generally the Practice of the Court in respect of the Matters to which this Act relates, and for regulating the Fees and Allowances to all Officers and Solicitors of the Court in respect to such Matters; and such Rules and Orders may from Time to Time be rescinded or altered by the like Authorities respectively; and all such Rules and Orders shall take effect as General Orders of the Court.

Rules and Orders to be laid before Parliament.

XXXI. All General Rules and Orders made as aforesaid shall, immediately after the making and issuing thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within Twenty-one Days after the next Meeting thereof; and it shall be lawful for either of the Houses of Parliament, by any Resolution passed within Thirty-six Days after such Rules or Orders have been laid before it, to resolve that the same or any Part thereof ought not to continue in force, and thereupon the same shall cease to be binding.

XXXII. It



*Leases and Sales of Settled Estates.*

XXXII. It shall be lawful for any Person entitled to the Possession or to the Receipt of the Rents and Profits of any Settled Estates for an Estate for Life, or for a Term of Years determinable with his Life, or for any greater Estate, either in his own Right or in right of his Wife, unless the Settlement shall contain an express Declaration that it shall not be lawful for such Person to make such Demise; and also for any Person entitled to the Possession or to the Receipt of the Rents and Profits of any unsettled Estates as Tenant by the Courtesy, or in Dower, or in right of a Wife who is seised in Fee, without any Application to the Court, to demise the same or any Part thereof, except the principal Mansion House and the Demesnes thereof, and other Lands usually occupied therewith, from Time to Time, for any Term not exceeding Twenty-one Years to take Effect in possession; provided, that every such Demise be made by Deed, and the best Rent that can reasonably be obtained be thereby reserved, without any Fine or other Benefit in the Nature of a Fine, which Rent shall be incident to the immediate Reversion; and provided that such Demise be not made without Impeachment of Waste, and do contain a Covenant for Payment of the Rent, and such other usual and proper Covenants as the Lessor shall think fit, and also a Condition of Re-entry on Nonpayment for a Period not less than Twenty-eight Days of the Rent thereby reserved, and on Nonobservance of any of the Covenants or Conditions therein contained; and provided a Counterpart of every Deed of Lease be executed by the Lessee.

Tenants for Life, &c. may grant Leases for Twenty-one Years.

XXXIII. Every Demise authorized by the last preceding Section shall be valid against the Person granting the same, and all other Persons entitled to Estates subsequent to the Estate of such Person under or by virtue of the same Settlement, if the Estates be settled, and in the Case of unsettled Estates against all Persons claiming through or under the Wife or Husband (as the Case may be) of the Person granting the same.

Against whom such Leases shall be valid.

XXXIV. The Execution of any Lease by the Lessor or Lessors shall be deemed sufficient Evidence that a Counterpart of such Lease has been duly executed by the Lessee as required by this Act.

Evidence of Execution of Lease by Lessee.

XXXV. The Act of the Thirty-second Year of King *Henry* the Eighth, Chapter Twenty-eight, intituled *Lessees to enjoy the Farm against the Tenants in Tail*, and the Act of the Parliament of *Ireland* of the Tenth Year of King *Charles* the First, Session Three, Chapter Six, intituled *An Act that Lessees shall enjoy their Farms against Tenants in Tail or in right of their Wives, &c.*, are hereby repealed, except so far as relates to Leases made by Persons having an Estate in the Right of their Churches.

Repeal of 32 Hen. 8. c. 28. and 10 Car. 1. sess. 3. c. 6. (Ireland), except as to Ecclesiastical Leases.

*Leases and Sales of Settled Estates.*

Provision as  
to Infants,  
Lunatics, &c.

XXXVI. All Powers given by this Act, and all Applications to the Court under this Act, and Consents to such Applications, may be exercised, made, or given by Guardians on behalf of Infants, and by Committees on behalf of Lunatics, and by Assignees of Bankrupts or Insolvents: Provided nevertheless, that in the Cases of Infant or Lunatic Tenants in Tail no Application to the Court or Consent to any Application may be made or given by any Guardian or Committee without the special Direction of the Court.

A married  
Woman ap-  
plying to the  
Court to be  
examined  
apart from  
her Husband.

XXXVII. Where a married Woman shall apply to the Court, or consent to an Application to the Court, under this Act, she shall first be examined apart from her Husband touching her Knowledge of the Nature and Effect of the Application, and it shall be ascertained that she freely desires to make or consent to such Application; and such Examination shall be made whether the Hereditaments which are the Subject of the Application shall be settled in trust for the separate Use of such married Woman independently of her Husband, or not; and no Clause or Provision in any Settlement restraining Anticipation shall prevent the Court from exercising, if it shall think fit, any of the Powers given by this Act, and no such Exercise shall occasion any Forfeiture, anything in the Settlement contained to the contrary notwithstanding.

No Clause,  
&c. in  
Settlement  
restraining  
Anticipation  
to prevent  
Court from  
exercising  
Powers of  
this Act.

Such Ex-  
amination to  
be either by  
the Court  
or by a  
Solicitor.

XXXVIII. The Examination of such married Woman shall be made either by the Court or by some Solicitor duly appointed by the Court for that Purpose, who shall certify, under his Hand, that he has examined her apart from her Husband, and is satisfied that she is aware of the Nature and Effect of the intended Application, and that she freely desires to make or consent to the same.

As to  
Consent of  
Married  
Women  
under Age.

XXXIX. Subject to such Examination as aforesaid, married Women may make or consent to any Applications, whether they be of full Age or Infants.

No Equity to  
compel any  
one to apply  
to the Court.

XL. Nothing in this Act shall be construed to create any Obligation at Law or in Equity on any Person to make or consent to any Application to the Court, or to exercise any Power.

Tenants for  
Life, &c. may  
exercise  
Powers not-  
withstanding  
Incum-  
brances.

XLI. For the Purposes of this Act, a Person shall be deemed to be entitled to the Possession or to the Receipt of the Rents and Profits of Estates, although his Estate may be charged or incumbered either by himself or by the Settlor, or otherwise howsoever, to any Extent; but the Estates or Interests of the Parties entitled to any such Charge or Incumbrance shall not be affected by the Acts of the Person entitled to the Possession or to the Receipt of the Rents and Profits as aforesaid unless they shall concur therein.

XLII. Pro-

*Leases and Sales of Settled Estates.*

XLII. Provided always, That nothing in this Act shall authorize any Sale or Lease beyond the Term of Twenty-one Years of any Settled Estates in which, under the Act of the Thirty-fourth and Thirty-fifth Years of King *Henry* the Eighth, Chapter Twenty, “to embar feigned Recovery of Lands wherein the King is in Reversion,” or under any other Act of Parliament, the Tenants in Tail are restrained from barring or defeating their Estates Tail, or where the Reversion is vested in the Crown.

Exception as to Entails created by Acts of Parliament.

XLIII. Nothing in this Act shall authorize the granting of a Lease of any Copyhold or Customary Hereditaments not warranted by the Custom of the Manor without the Consent of the Lord, nor otherwise prejudice or affect the Rights of any Lord of a Manor.

Saving Rights of Lords of Manors.

XLIV. The Provisions of this Act shall extend to all Settlements, whether made before or after it shall come in force, except those as to Demises to be made without Application to the Court, which shall extend only to Settlements made after this Act shall come in force.

To what Settlements this Act to extend.

XLV. This Act shall not extend to *Scotland*.

Extent of Act.

XLVI. This Act shall come in force on the First Day of *November* One thousand eight hundred and fifty-six.

Commencement of Act.

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