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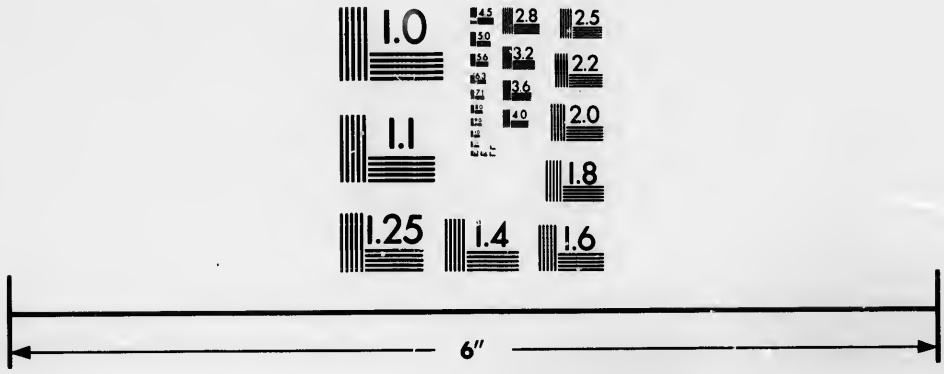

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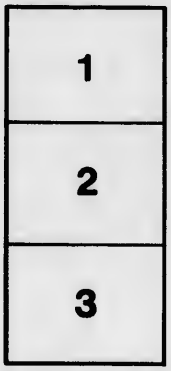

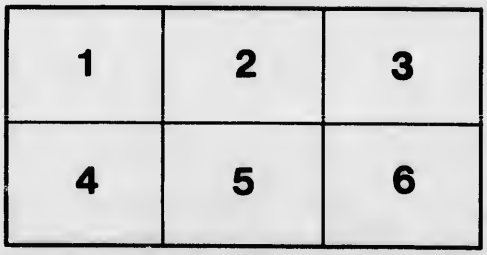

REPRESENTATION

AGAINST THE

Title of the Seminary to the Seigniory of Montreal;

AND

OBJECTIONS

TO THE

Proposed Ordinance for the Extinction of Seigniorial Dues

IN THE

CITY AND ISLAND OF MONTREAL.

Montreal:

PRINTED AT THE MORNING COURIER OFFICE.

1839.

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REPRESENTATION, &c.

At a Meeting of Proprietors of Real Property, in this Seigniory, held in this City on the 17th instant, to take into consideration the title of the Seminary to the Seigniory of this Island and the objections to the Ordinance now before the Special Council, for the extinction of Seigniorial Tenure in Montreal, John Torrance, Esq., was appointed Chairman and W. Badgley, Esq. Secretary of the Meeting. The Secretary submitted the following Representation which was adopted, ordered to be printed and generally circulated:—

The object of this publication is to explain familiarly, the evils of the Feudal Tenure, as they more immediately affect this City and Island, and to expose the grounds of objection to the Ordinance, now before the Special Council for approval, to "*Incorporate the Ecclesiastics of "the Seminary of St. Sulpice of Montreal, to confirm their Title to "the Fief and Seigniory of the Island of Montreal, the Fief and "Seigniory of the Lake of the Two Mountains, and the Fief and "Seigniory of St. Sulpice, in this Province;—To provide for the "gradual extinction of Seigniorial Rights and Dues within the "Seigniorial limits of the said Fiefs and Seigniories, and for other "purposes.*"

It will not be considered necessary to dilate at any length upon the evils and inconveniences which attach to the existence of the Feudal Tenure in general, they are so unquestionable as to be admitted by all parties, and are so obvious a check to improvement and the free circulation of property, as to require but little comment; it may not, however, be improper to notice some of the more prominent features of this civil slavery, which has caused so much irritation; it is therefore proposed briefly to advert to the nature and consequences of *lods et ventes, feudal retrait, banalité, &c. &c.*

And first, *lods et ventes.*—This is a right of the Seignior to the payment, from every purchaser of real estate, of a proportional fine upon every mutation thereof, to the amount of one-twelfth of its value at the time of the alienation, and upon every lease of real estate for a longer period than nine years, to the amount of the capital represented by the

annual rent. This fine is not only exigible upon the value of the ground, but upon all improvements of whatever description made at any time subsequent to the original concession of the ground, whether those improvements be in the nature of buildings, or cultivation; and in its effects, it acts not only as a tax upon industry, but as an exorbitant exaction from the hard earnings of years of labour and economy, acquired for the comfort and support of old age, and the maintenance and education of a family.

Figures will clearly exhibit the enormity of this exaction: A. purchases from B. a piece of ground of little or no value, say of the value of £120, whereupon B., by the mere effect of Law, becomes personally liable to pay to the Seignior, the sum of £10, in addition to the amount of his purchase money. B. afterwards improves his purchase, and erects upon it buildings at his own expense and from his own earnings, to an amount sufficient with that of his purchase, to make his property actually worth to him, £1,200. When he sells it, he is compelled to lose one-twelfth of that sum, because, being only worth that amount, the purchaser from B., aware of the Feudal exaction, would pay him that value less £100, the amount of the fine for which his purchase would render him personally liable to the Seignior. If the same property be sold twelve times in as many months or days, for a similar amount, the Seignior would receive its entire value; or, if at each successive sale, it were found to have been improved to a similar, a greater or less amount, by each successive purchaser, the same proportional fine would be exigible by the Seignior from each successive purchaser, as well upon the value of his purchase, as upon the money laid out by him in the improvements. The same principle applies to land under cultivation, and improvements in agriculture and the wages of labor are alike made to contribute to this extortionate oppression.

As a further proof of the gross injustice of this Feudal exaction, it may be observed, that if houses and buildings covered to their full value by insurance, be consumed by fire, the proprietor is entitled to receive the whole amount of the insurance money, without any drawback for *lods et ventes*, or, the insurance money may be received by the assignee of the proprietor without any such drawback, or, an individual may take down his house and buildings erected on ground held under Feudal tenure, and can not be compelled by the Seignior to erect similar or other buildings, nor pay him *lods et ventes* upon the value of the buildings taken down: examples these, which conclusively establish the injustice of the Feudal exaction so loudly complained of.

It should likewise be borne in mind, that the value of the fine increases with the improvements made, and the income of the Seignior increases with the increased value, from whatever cause, of real estate held under Seigniorial Tenure, and without any contribution or assistance on the part of the Seignior to augment the value of his Seigniory, and without any outlay, further than is required for public purposes, from every inhabitant of the Province.

Feudal *retrait* is the next in order of oppression, and is a right of pre-emption, by the Seignior, to assume to himself any purchase made by his tenant, (*censitaire*,) of real property in his Seigniory, however advantageous it may be to the purchaser, upon payment to him by the Seignior, of the actual purchase money and the expenses of the purchase. This right is only exigible within forty days, from the time of the exhibition to the Seignior of the purchaser's title, which the Law requires him to do in that time, a period which is extended for thirty years after the purchase if the title be not exhibited, unless the Seignior, during that period, divest himself of his right by receiving the *lods et ventes* of the purchase. If the property have changed hands fifty times in that interval, and no title have been exhibited and no *lods et ventes* received by the Seignior, he may deprive the last purchaser of the property, either for the amount of his purchase or for that of the first or any intervening acquisition. As a familiar illustration, A. sells a property to B., for £100, B. to C., for £200, C. to D., for £300, and no titles have been exhibited nor *lods et ventes* paid, the Seignior within 30 years after the sale from A., may deprive D. of his purchase upon payment to D. of £100, the amount of A.'s sale and the expenses incurred by D. on his purchase. It must at the same time be remarked, that however valuable or extensive may be the amount of the improvements since the date of A.'s sale, the Seignior is not liable to pay any part of them, and can only be compelled to refund such expenses as may have been incurred for the necessary protection and preservation of the property under the first sale, from ruin and destruction, leaving to D. his recourse as he may be advised against his vendor for the recovery of the balance of his purchase money.

The infamy of this exaction is too gross to need any remark.

Banalité is a right enjoyed by the Seignior, to compel all persons residing within the limits of his Seigniory to grind at his mill all grain in their possession, and which they require to have ground, whether it be the produce of the Seignorial land, or have been imported by them, and in default to cause all flour made elsewhere, to be seized, if

found on the high road, and confiscated to his profit. In the exercise of this right, the Seignior may likewise prevent Millers living beyond his Seigniory, from seeking grain within its limits, to grind at their mill out of his Seigniory. A vassallage more oppressive than this can scarcely be conceived, especially in a trading country; and it is peculiarly aggravating in this province, inasmuch as it not only tends to check agricultural improvement, but also to repress enterprise in the manufacture of the products of the soil, and at the same time to cramp the interests of commerce.

Other exactions equally as oppressive as the foregoing might be enumerated, but it is believed that these suffice to shew the evils of this iniquitous tenure. It is this system which it is intended to legalize and practically enforce, by the operation of the Ordinance above mentioned, which, professing to relieve the *censitaires* of this City and Island from its exactions, more closely rivets chains already too oppressive, by giving to the Seminary of Montreal, a title to the Seigniory which they never previously possessed.

The grounds upon which rest the objections to the title of the Seminary to the Seigniory of Montreal, are so substantial and have so frequently been before the public, that they only now require to be briefly recapitulated.

1st. The fair and undeniable conclusion to be drawn from the terms of the three articles of the Capitulation of Montreal, in reference to the religious communities and Priests then existing, among the number whereof was the House of St. Sulpice at Montreal, is that their existence depended upon the pleasure of the King; and it is a fact that no such existence has since been legally acknowledged by the Sovereign.

2d. At the time of the Capitulation of Montreal, the Ecclesiastics of St. Sulpice at Paris were the actual and acknowledged proprietors and possessors of the Seigniory of Montreal, and the Sulpicians established in this city were merely their agents or receivers. By the subsequent treaty of peace of 1763, the French inhabitants or others who had been the subjects of the French King, were allowed to sell the estates which they possessed in the Province, provided it were to the subjects of His Britannic Majesty. That condition was not observed in this case, and the Members of the Seminary of Montreal were so satisfied of their want of that distinguishing characteristic to enable them to purchase or take real property in this province, that after the executing of the Deed of Cession by the Seminary at Paris to them in 1764, the Ecclesiastics of Montreal obtained letters of denizenship from the Crown.

3d. At the Capitulation above referred to, the Ecclesiastics of St. Sulpice at Montreal neither had nor professed to have any corporate capacity, nor was any claim or reservation made therefor on their behalf either in the terms of the Capitulation, or in the subsequent treaty of peace of 1763, whereby, as a corporate-body, they could acquire real estate in the Province; and no act of incorporation has since that time been conferred upon them, nor did they, at the Capitulation nor at any time before or since, obtain any legal right to hold the said Seigniory in mort-main, nor obtain Sovereign permission therefor. The pretended cession in the Deed of Gift of 1764 from the community at Paris, could not, therefore, confer upon the Seminary here any title to the Seigniory of Montreal.

4th. Assuming, for the sake of argument, that rights and privileges may have been reserved at the Capitulation, it is common sense supported by public national law, that a subsequent treaty, which is the final decree, may modify or set aside any such reservations. By the 4th Article of the definitive treaty of peace of 1763, it is evident that the pretended reservations in the Capitulation of Montreal were altogether done away with, as far as the possessions of the religious orders were concerned, and the Province became subject to the British Government under the same laws as the remainder of the kingdom, namely the laws of England, subject to subsequent modification by competent Legislative authority.

5th. Not only did the community of Sulpicians at Montreal possess no corporate capacity at the time of the Capitulation nor of the treaty of Peace, but His Majesty could not by the laws of England, and consequently in fact did not, confer upon them such an incorporation. By the terms of the treaty of 1763, the full exercise of their religious worship *only*, is secured to His Majesty's new Roman Catholic subjects, as far as the laws of Great Britain permit, and the Act of 1774 and the subsequent Royal instructions in 1775 and since, amply confirm, that religious tolerance, subject however to the same limitations and to the King's supremacy according to the laws of England.

6th. In confirmation of the dependent existence of the community of Sulpicians at Montreal upon the King's pleasure, as gathered from the articles of the Capitulation, the Act of 1774 secures to His Majesty's Canadian subjects in this Province, the enjoyment of their property and possessions, in as ample and beneficial a manner as before any British regulations on the subject had been made; *but the possessions of the religious orders and communities were expressly excepted.* More-

over, by the instructions to the Governors of Canada from 1775 downwards, the Seminaries of Quebec and Montreal were only *allowed to* "continue to possess and occupy their houses of residence, and their other houses and lands, to which they were lawfully entitled, on the 15thof September, 1759." It would be a gross perversion of plain language, to extend the simple meaning of these terms, to the possession and exercise of the right of Seigniory over the Island of Montreal.

7th. The invitation to His Majesty's subjects, contained in the Royal proclamation of 1763, to settle in this colony and to acquire such lands as might be in His Majesty's power to dispose of upon grants to such settlers, upon the terms and moderate quit rents, services and acknowledgments appointed and settled in the other colonies—the subsequent confirmation of the rights of such settlers acquired under that proclamation—the positive exception of the possessions of the religious orders coupled with the subsequent suppression of two of them and the assumption of their estates by the Crown—and the mere permission of occupancy given to the Seminaries of Quebec and Montreal, concur in establishing His Majesty's power over the Seigniory of Montreal, and confirm the vested rights of those settlers under the letter of the proclamation, to grants of land in the said Seigniory which it was actually in His Majesty's power to bestow upon persons inhabiting in or resorting to the colony, and specially upon the moderate rents and services appointed and settled in the then other colonies of the Crown.

8th. In confirmation of the above objections, reference may also be had to the opinion given at different times, by the eminent law-officers of the Crown, of the absolute want of title in the Seminary of Montreal to the Seigniory of this Island; and as if to corroborate and strengthen those objections, the provisions of the proposed Ordinance, which it is well known were prepared by a learned Counsel of this city under the express direction of the heads of the Seminary, not only give them a title to the Seigniory, which they themselves acknowledge in the preamble to be doubtful, but likewise invest them with a corporate ecclesiastical capacity, which they never possessed nor were allowed to possess.

Other objections equally if not more forcible than the foregoing, might be advanced against the pretensions of the Seminary, but it is believed that these will suffice for the present purpose.

The oppressive and vexatious character of the Feudal Tenure, having been constantly and generally felt by all classes of the British inhabitants of this City and Island, formed one of their most prominent grievances. Petitions and remonstrances upon this subject were frequently

addressed by them to the Crown and to their fellow subjects, and at last gave rise to a determination on the part of the Government, to provide for the extinction of feudal burdens in this City and Island. Upon a recent occasion, a petition as respectable from the number of its supporters as from their character and possessions, was presented to a high provincial authority, deprecating the continuance of the obnoxious tenure, and denying the claim of the Seminary. This Petition, like previous remonstrances, received none of that attention which its signers had been encouraged to expect, and the subject appeared to have been altogether dropped, when it became accidentally known that an Ordinance, to legalize the title of the Seminary, and at the same time professing to provide for the gradual extinction of Seigniorial burdens, had been submitted by Sir JOHN COLBORNE to the Special Council for approval, but that it was *then* on the point of being passed and of receiving His Excellency's sanction, of the terms of the ordinance or of its existence, the inhabitants, whose vital interests were at stake, had no knowledge and had received no intimation.

Time and opportunity were both wanting to enforce the objections of the inhabitants, except in a respectful but hasty remonstrance, which however failed of success to prevail upon His Excellency to suspend further proceedings upon the Ordinance. However desirous they might have been for an adjustment of the Seigniorial difficulties, the extraordinary character of the pretensions of the Seminary, as embodied in the Ordinance, plainly indicate that every ecclesiastical corporate privilege however extravagant will be claimed, and that every feudal exaction however onerous will be enforced, if the title of the Seminary be confirmed, and that the only course open to the inhabitants is absolutely to oppose the pretensions of the Ecclesiastics to those ecclesiastical rights and to the possession of the Seigniory of this Island.

From the temporary nature of the Legislative power conferred by the 1st and 2d Vict. cap. 9., and the provision contained in the Ordinance that it should be sanctioned by the Imperial Parliament, it did not become law, but a precisely similar Ordinance was lately submitted to the Special Council for approval by His Excellency CHARLES POULETT THOMSON, the discussion of which has been suspended till the return of His Excellency from Upper Canada, which may be expected to take place in a few days.

It is so evident that the obnoxious provisions of the Ordinance, and the design of conferring upon the Seminary of Montreal, powers and

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privileges utterly at variance with the security and enjoyment of real property in this City and Island, are so generally and so little understood, that it has been considered expedient to point out and expose the substantial objections which may be urged by the inhabitants to the claim of the Seminary now attempted to be legalized, as well as the palpable defects in the Ordinance itself: and as His Excellency could not be aware of the paramount objection to the principle as well as to the details of the proposed law, a petition is in course of preparation, praying His Excellency to withdraw the obnoxious Ordinance from before the Special Council, in which the interests of the inhabitants and their opinions are altogether unrepresented, and to refer it to the wisdom of the United Provincial Legislature, wherein alone those inhabitants will be properly represented, and where the merits of the question will be fully and openly discussed and ample justice done to all parties.

The objections to the Ordinance rest upon the following among many other equally substantial grounds.

1st. Because it erects the Seminary of Montreal into an ecclesiastical corporation or body corporate ecclesiastical, with all the rights and privileges incident thereto, and which by law might or could be used and possessed by *any other Ecclesiastical Corporation*, but leaves those rights and privileges undefined and unknown, thereby enabling the Seminary to claim and possibly to acquire the oppressive and absolutely despotic privileges exercised in Europe, in some of the darkest ages of Christianity; privileges which no enlightened modern community could have contemplated or would endure, and which the liberal principles of Her Majesty's Ministers, at open variance with even civil corporate rights and powers in Great Britain, could not with any consistency to their characters as Statesmen, sanction or enforce in this Province.

2d. Because the Provincial Legislature of Lower Canada, as now constituted, has no power or authority to erect or create any ecclesiastical corporations in this Province, inasmuch as exercising only the same power and privileges in legislation, which were possessed by the late Provincial Legislature, that Legislature did not possess the absolute power of establishing such ecclesiastical bodies: and the recent statute of 2d and 3d Vict. ch. 53, enlarging the previous Legislative powers of the Governor and Special Council, enacts that no law shall be made altering or affecting the temporal or spiritual rights of Ecclesiastics in this Province, thereby plainly restricting the Legislative power from

erecting any such ecclesiastical corporation in this province, and specially in this island.

3. Because the said Seigniory of Montreal, since the Conquest of this Province, has always of right and justice been in the power of the Sovereign to dispose of, and been subject to the Royal promise contained in the Proclamation of 1763, for the grant of the same to settlers, upon the moderate Quit Rents appointed and settled in the then other Colonoies of the Crown, and without any reference to Seigniorial Tenure; and because the Ordinance not only deprives the Crown of that vested right, but at the same time abrogates the rights acquired by the British settlers, to grants from the Crown in the said Seigniory in Free and Common Soccage,which the subsequent Imperial Act of 1791, specifically allowed them to claim and demand.

4. Because, contrary to the constant and reiterated respectful remonstrances of the said settlers to the Sovereign, against the continuance of the Feudal Tenure, the said Ordinance would have the effect of confirming the Seigniory of this Island as a Seigniory, with all the exactions and oppressions of the Feudal Tenure incident thereto; and moreover of investing that Seigniory and all the rights and privileges belonging or in anywise appertaining thereto, in the Ecclesiastical Corporation thereby constituted; confirming those rights and privileges in that Corporation and declaring them to be good and valid in the Law as fully and to the same extent, as the Seminary of Saint Sulpice at Paris or the Seminary of Montreal or both together, before the 18th day of September 1759, might or could have held or enjoyed the same, without any definite or known specification of the extent or nature of those Seigniorial rights and privileges: in the generality of the concession, establishing in favour of the Corporation, every Feudal exaction which the most Feudal times of Old France could have enforced.

5. Because it establishes a right of commutation exceedingly onerous to the inhabitants, and infinitely greater in amount than the expectations or the previous demands of the Seigniors themselves, which had been hitherto limited to securing the competent means of support for themselves and for their establishment; and because it is well known that the Seminary at no very distant period, were in treaty with the Government to abandon their claim, in consideration of a fixed money compensation, for the special purpose of effecting a settlement of the question, at which time, the sum of £100,000 would have been willingly accepted by the Seminary, whereas, by the proposed Ordinance, they will be at once invested with triple that amount.

☞6. Because the Ordinance specifically provides for the continuance of the right of *banalité*, until after a majority of the *censitaires* in each of the Seigniories of Montreal, St. Sulpice and Lake of the Two Mountains, shall have effected a commutation of the Seigniorial Tenure, thereby limiting a period for the cessation of the obnoxious Feudal privilege, which is not only delusive but can scarcely be anticipated to arrive within any given reasonable time.

7. Because it confirms to the Seminary all and every the Seigniorial exactions which have been already described and which have not hitherto been enforced from their want of title, an impunity of which the Ordinance will at once and for ever deprive the inhabitants and which they feel confident will not be allowed to continue beyond the passing of the Ordinance.

8. Because though the Ordinance professes to require the investment in public stocks of the monies arising from the commutation of Seigniorial burdens, with the exception of £30,000 which may be by the Ecclesiastics invested in purchase of real estate affording income, it contains no provision as to what period those investments are to be made, while at the same time authority is given to the Ecclesiastics to purchase and hold *any other real property*, and to *any amount* destined for purposes of religion, charity or education, provided the same produce no income, whereby with the command of the capital which will be at their disposal, an incalculable amount of real estate upon this island may become subjected to *mort-main*, and municipal as well as general improvement, be thereby greatly retarded.

9. Because the moving consideration of the original concession of the Seigniory, confirmed by the subsequent public acts and frequently acknowledged by the Ecclesiastics, was for the instruction and edification of the inhabitants generally of Canada, then comprehending both Provinces and with the intent that the net income of the Seigniory and the increase thereof should be employed for the advancement of those objects, a consideration affirmed in the strongest terms by the House of Assembly in 1830, in a petition to His late Majesty deprecating the diversion of that income to any other purpose; whilst by the terms of the Ordinance, the proceeds and revenue of the Seigniory will be absolutely and altogether diverted from Upper Canada, and will be applied in Lower Canada, only in such a manner and for such purposes as the said Ecclesiastics may think proper, or if applied at all for instruc-

tion and edification, will be applied towards the sectional education and instruction of a portion only of the population.

10. Because the contemplated establishment of the said Ecclesiastical Corporation without definite or known powers, and its investment with the command of immense wealth in proportion to the general wealth of the province, will confer upon the Ecclesiastics an influence both Civil and Ecclesiastical, which when possessed by any corporate body, but particularly by one of the nature in question, cannot fail of being exceedingly dangerous.

11. Because the Ordinance contains no reciprocity between the pretensions of the Ecclesiastics and the claimants to the free possession of real estate in this Island, inasmuch as its provisions secure every privilege to the former without any corresponding advantage to the latter; because it is at utter variance with the intention of the Imperial Parliament declared in the 2d and 3d Victoria, cap. 53, for the *general* and *immediate extinction* of Feudal rights and dues in this Island, by illegally providing only for their *gradual* extinction, thereby not only absolutely and illegally creating Feudal burdens but affirming their continuance for an indeterminate period; and because it illegally authorizes partial commutations, whereby the inhabitants will be deprived of every advantage anticipated to arise from the general extinction of Feudal burdens in this Island.

12. and last.—Because the Provincial Legislature in the provisions of the Ordinance has exceeded the limited authority intrusted to it by the wisdom of the Imperial Parliament in the Statute of 2d and 3d Victoria, cap. 53, and which it did not possess under the Statute constituting that Legislature in the year 1837, 1st and 2d Victoria cap. 9, by confirming the pretensions of the Seminary to the Seigniory of Montreal, thereby assuming a right of legislation between individuals as to private property over which the Legislature could exercise no controul, further than to provide for the liberation of that property from the effect of Feudal burdens, by the *absolute extinction of the Seigniorial rights and dues claimed by the Seminary;* and moreover by confirming similar pretensions of the Seminary to the Seigniories of Saint Sulpice and Lake of the Two Mountains, thereby assuming a similar right of *Legislation as to private property* in those Seigniories, over both of which Seigniories the Legislature is expressly *restricted* from exercising any controul in this respect by the express exception contained in the said Statute 2d and 3d Victoria, cap. 53.

The foregoing reasons independent of the impolicy and inexpediency of establishing the Feudal tenure in this City and Island, being considered sufficiently powerful to warrant the most strenuous and determined opposition to the pretensions of the Ecclesiastics, have been published with a view to make the inhabitants in general of this island acquainted with the objections which exist, both in principle and detail, to the proposed Ordinance.

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