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CANADIAN JEWISH ARCHIVES

FOUNDED BY SAUL HAYES, O.C., Q.C., LL.D., F.R.S.A.
FIRST EDITOR LOUIS ROSENBERG, F.R. Econ.S., F.S.S.

Nous nous souvenons

Forgetfulness leads to Holocaust;
Remembering is the root of redemption.
(Baal Shem Tov)

NEW SERIES
NUMBER TWENTY-FIVE

SAMUEL BECANCOUR HART AND 1832

Compiled by
DAVID ROME

RESEARCH NOTES
KEVIN ANDREW CADLOFF

"Cornerstone of Freedom"

Statement of Canadian Jewish Congress Committee for
the Observance of the 150th Anniversary of the Act of 1832

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CANADIAN JEWISH CONGRESS COMMITTEE FOR THE OBSERVANCE OF THE 150th ANNIVERSARY OF THE ACT OF 1832. Chairman: B.J. Finestone

"CORNERSTONE OF FREEDOM"

One hundred and fifty years ago, in Quebec City, an act was passed which became the very cornerstone of this country's religious and political freedoms. It was enacted quietly, without fuss or fanfare, by the legislature of Lower Canada.

It was an act that granted full rights and privileges to Jews in Lower Canada, but in fact it pioneered religious and political emancipation in this country for all its peoples.

This historic piece of legislation was enacted under the guidance of the noteworthy figure of our history, the French Canadian nationalist, Louis-Joseph Papineau. The act, which was simple and brief, was passed in 1831, and declared law by Royal Assent in London on June 6, 1832. In its title it declared Jews in the colony eligible to all offices and privileges:

> "An Act to declare persons professing the Jewish religion entitled to all the rights and privileges of the other subjects of His Majesty in this Province."

At the time of its passage this noteworthy act barely made the back page of the Montreal Gazette. Since then it has gone virtually unnoticed and unsung in our histories of this country. On this 150th anniversary it is time to give full recognition to this noble proclamation and the men who brought it into being.

How did this Act proclaiming religious freedom come about in 1832?

Early nineteenth century Canada saw restricted freedoms for its inhabitants, although it was by no means repressive by the standards that then prevailed in the western world. Canadians enjoyed the fundamental traditions which provided the means of struggle for fuller freedoms, including an elected Legislative Assembly, English common law, political parties, a free press, a just judiciary, religious and patriotic conscience, free articulate men of culture and devotion to the public good.

At the same time, there was a restrictive colonial bureaucracy in the Canadas that used all available means to maintain the status quo and to preserve its own dominant position. A significant challenge to this status quo arose in 1808, when Ezekiel Hart was elected to represent the francophone and anglophone voters of the borough of Trois-Rivières. However, his right to sit was challenged by the members of an opposing party. It was argued that a Jew, Ezekiel Hart, could not legitimately take the oath of office, concluding with the words, "on the true faith of a Christian". He was ejected from the Legislature, and his seat was declared vacant.

New elections were called, Ezekiel Hart ran again and was re-elected, only to be ejected from the Legislature for a second time.

The restrictive practices of the colonial bureaucracy in the Canadas were not always supported by London and, indeed, it appears that British authorities were more responsive to the winds of change that were sweeping the colony after the American Revolution Nonetheless, the position of the Church of England as the state church and the sole officially recognized religion left all other churches and religions without full legal status.

In Lower Canada, where Catholics constituted the majority, their church and religion were in effect merely tolerated. In fact, there were restrictions on the training and/or entry of priests; there were problems in the appointment of bishops, and the establishment of new parishes was controlled.

Other religious groups were subject to even greater restrictions, precluding the naming of Ministers and the building of churches and preventing the registration of marriages, births, and deaths.

While this was a most unhappy condition for the various Christian churches, it was even harder for Jews. Legally, Jews could not die, for there was no register to record their demise. Many decades after Aaron Hart, the father of Ezekiel Hart, died in 1800, there were problems in transferring the properties he bequeathed to his children; legally, the 130-year-old pioneer of Trois-Rivières had not yet died.

It should be noted that the Church of England in Canada had not initiated these religious restrictions. It was the inheritor of an historic legacy that dates back to the reign of King Henry the Eighth. In fact, there is evidence that some Anglicans cooperated with, and helped, members of other Christian religions to pursue their beliefs under these restrictive conditions.

The early history of Canada can be read as a continuum of struggles for expanding freedoms. In the particular instance of the 1832 Act, while the immediate effect was to grant equality as full citizens to Jews, it proved to be the key to freedom for all religions. It precipitated a movement that swept across Canada.

This revolutionary act passed the Catholic legislature of Lower Canada, under the leadership of Louis-Joseph Papineau who served as its Speaker for over 25 years. The significance of the historic enactment in this British Colony can be more fully appreciated when one realizes that it preceded similar legislation in the United Kingdom where full religious emancipation was not legislated for another twenty-seven years.

Though the road was soon cleared for all religious denominations to enjoy full freedom and to pursue their own particular forms of worship, there were still obstacles to be overcome. This was particularly true for the Jews of the colony who still had to fight to enjoy the rights which had just been granted them by law.

Members of the bureaucracy actively sought to subvert the meaning of the law. They warned that Jews taking advantage of the opportunities it opened up would be subject to legal sanctions; they harassed Jewish candidates for office, withheld legal forms from them and sought to involve London in their efforts.

They nearly succeeded. In the face of such pressure, several of the most prominent and courageous Montreal Jewish citizens, Benjamin Hart and Moses Judah Hays, withdrew their candidatures for public office. But Samuel Becancour Hart of Three Rivers did not succumb to this harassment and pursued his claim to a Magistrate's seat on the Commission of Peace, Province of Lower Canada.

The turmoil continued. The Legislative Assembly saw this issue as a fundamental challenge to its sovereignty and to the principle of responsible government.

A Legislative Committee, headed by Dr. René Kimber, was formed to examine the matter. The Committee's report dramatically sets out in vivid detail the whole struggle of the Jews of the colony, the obstacles thrown up by the bureaucrats and the bitter response of Samuel Hart and his brothers.

This report sealed the final triumph over the obstructionists.

The Committee concluded that the law as passed was valid and clearly overrode any technicalities that might be raised. The Commissioners even condemned the Jewish citizens who had questioned the law by hesitating to avail themselves of its complete and unreserved intent.

The 1832 proclamation of religious freedom for the Jews of Quebec was a noteworthy and noble event in the history of Canada. It proved to be of even great significance as the catalyst which opened the dams of religious restrictions: legislation followed across the Canadas, bringing relief and dignity to all religions. Within that year, Upper Canada legislated to revoke the old instruments of oppression, including the Christian oath and the prescribed Mass as the prerequisites for office and as legal requirements in courts.

Finally, in 1851, the United Province of Canada passed an act guaranteeing the freedom of worship and the equality of all religions. By virtue of the empowering legislation, Imperial consent was required, and, when granted, had the effect of inserting this freedom into the Provincial constitution. Later, in 1866, the Civil Code of Lower Canada declared in art. 6 (now art. 18 of the Civil Code of Quebec), "Every human being possesses juridical personality. Whether citizen or alien, he has the full enjoyment of civil rights, except as otherwise expressly provided by law." The combined effect of these acts was to render the law of 1832 obsolete, but it had served its purpose well by pioneering the establishment of full religious equality.

— Peter Gollick

THE BACKGROUND

The very important Lower Canada legislation which gave the Jewish residents of the colony full civic rights is of interest to all concerned with the liberation movement of which the French Revolution was a climax and a spur.

As Montreal Jews in 1932 marked the centenary of the Lower Canada emancipation act of 1832, they recalled the summary of the European movement of emancipation noted by the British Hebrew scholar M. Gaster,

"The Jews could enjoy on paper all the rights and privileges, legally they were emancipated. But there was a long step to social emancipation and this mistake was fatal for Jews in Germany and elsewhere. True political emancipation does not demand national self-annihilation. The desire of living on a footing of equality, should be no condition for assimilation and treason to the past.

"In two countries the Jews enjoyed at that time what was then called civil and political liberty.

"In France and the United States the Jews enjoyed full emancipation. The universities were opened to them and a few were able to obtain renown in the political life of the nations, though the number could be counted on the fingers of one hand. The attempt of the various kingdoms and dukedoms to repress the mass and to drive the bourgeoisie again back into semi-slavery failed. The walls of the ghetto could not be built up high as before, and the Jews were able to push through and to break down one after the other the obstacles placed in their way of progress, civil as well as political.

"1830 then marked the first turning point in the political life of the nations of Europe. Many of the liberties which the people had obtained from the French and which had been filched by all kinds of bureaucratic manoeuvres and autocratic decrees had to be given back.

"Thus the Jews in Canada also obtained their full share of equal treatment as full-fledged citizens of Canada. They enjoyed the same rights as both their neighbours, the Catholics and the Protestants.

"In England the Catholic emancipation was also initiated at that time. Although the attempt of the Jews to obtain the same treatment as dissenters and Catholics did not have the same success, still, here again some of the prejudices had been removed, some difficulties put out of the way, and the road slowly prepared for that full emancipation which was to come some twenty years afterwards.

"In Germany the battle had to be fought inch by inch until 1848, which was the real turning point in the history of emancipation, not only of the Jews but of all the nations (Russia excepted).

"Even Holland, where the Jews had long enjoyed civil liberty, real political emancipation was only granted to them as late as 1842. So in Belgium.

"Towards the end of the 18th century, under that remarkable Emperor, Joseph II who was a century ahead of the nations of Europe, all the Jews were granted full political liberty by him.

"But it was like the lightning which cleaves the dark clouds and illumines the world with one flash soon to be extinguished. The latter end was worse than the beginning.

"Then came the great revolution of 1848 when all these disabilities were swept away. The waves of the human sea had risen high; they dashed against the rocks of bureaucracy and dislocated them.

"Anyone who studies the history of progress, both political and economical, cannot help recognizing the measure of success in this direction which was due to the energy, activity, enthusiasm and loyalty of the Jews. There was ability to move freely and to breathe freely, and also gratitude towards those who had brought them out from darkness into light and from the narrow streets of the ghetto into the high road of human life. They were genuine patriots.

"In England the march of events had brought the same change. But here the great revolution of 1848 was like a small ripple on the waves. English people had enjoyed full liberty for centuries. There was no need of emancipation except for those who had been excluded for religious reasons from enjoying political privileges. As the English church was the recognized religion of the state, the Catholics and dissenters were also excluded; the Jews being also considered as dissenters. The City of London set the example by appointing a Jewish alderman, and even electing a member to Parliament who refused to take the Christian oath and was ejected, but returned again. This helped to break down the last barrier." ("A Century of Jewish Life" in Centennial Jubilee Edition, Jewish Daily Eagle, p. 36)

"Political Rehabilitation"

Isidore Goldstick considers that the term Political Rehabilitation would be a more precise designation for the event of 1832. The act placing the Jews "on a political parity with other citizens really effected a restitution of the equal rights which they had enjoyed a quarter of a century earlier.

"Prior to 1808 their political and civil status had not been called in question. That year they were in effect declared ineligible to sit in Parliament. Discriminating legislation against them was only averted by a friendly Governor, but a parliamentary precedent which barred a Jew from the House because of his religious tenets had practically the same effect. Whether this act was due to a mere political episode, a caprice of fate, or a concatenation of causes, the Jews of Lower Canada (there were no Jewish communities in Upper Canada at the time) were put under a disability in 1808, which was revoked by the Act of 1832. This measure was a new definition of their rights, a declaration of their full-fledged citizenship.

"The agitation for the redress of their grievances and the resultant reinstatement of the Jews of Canada in their political rights synchronized with the movement for Jewish equality in the enlightened countries on the European continent and in England. The seeds sown by Lessing and Dohm in Germany, Count Mirabeau and the Abbé Grégoire in France, and others found fertile soil here and there. The French Revolution had restored the Jews of France to human dignity, and its slogan 'Liberty, Equality, and Fraternity' was vibrating sympathetically in other countries. To be sure, the lot of the vast majority of the Jews, who were then living in Russia, remained unaffected by the spirit of tolerance and liberality that was spreading. Elsewhere, however, despite many relapses, continual progress was made in the liberation of the Jews through the abrogation or emendation of hostile laws, born of prejudice and bigotry and having their roots in the middle ages.

"In England steady gains had been made in the movement for Jewish equality. About the time the law of 1832 was enacted in Lower Canada, the Jews of England, led by Isaac Lyon Goldsmid, were waging an energetic campaign for their complete enfranchisement, and were rewarded in 1833 when the House of Commons passed a bill for the removal of Jewish disabilities. (Unfortunately this bill was rejected by the Upper House, and it was not until some thirty years later that the last political barriers against the Jews in England were removed.)

"Events abroad, then, tended to react favourably on the efforts of the champions of the Jewish cause in Canada. At home, too, the time had never been more propitious for legislation breathing the spirit of freedom. It was a time of political ferment. The agitation for governmental reform was gaining momentum both in Upper and Lower Canada; events were leading up to the rebellion of 1837. How could the Legislative Assembly refuse to redress the political grievances of any part of the population? In reinstating the Jews in their fullest political and civil rights the Parliament of Lower Canada was acting in consonance with the spirit of the times.

"The Act of 1832 swept away every vestige of Jewish legal disabilities, and had a far-reaching effect on the subsequent development and growth of Canadian Jewry. It has enabled the Jews of Canada to integrate themselves into the life of the land, notwithstanding the many unofficial disabilities from which they still suffer in spite of the hundred-year-old statute which declared them to be 'entitled to the full rights and privileges of the other subjects of His Majesty.'" (Foreword to A. Rhinewine. Looking Back a Century. Toronto, The Kraft Press, 1932. Pp. 11-13)

In the background of our story there is the drama of Jewish emancipation in England, as two decades earlier there had been the drama of "The Caesar and the Rabbi" of Napoleon and the Jews, the theme of Z. Shneur's Yiddish novel.

So we read in the Canadian Courier of Feb. 26, 1831:

"We perceive that the emancipation of the Jews is to come before the Imperial parliament in February. We hope the decision of the Imperial parliament will be on the side of liberal principles. Nothing can be more unjust or tyrannical than to oppress a man for obeying the dictates of his conscience."

Constitutional Acts

But for the best understanding of the events of 1831-34 it is well to examine it in the local Quebec context rather than to seek to fix it in broader frames such as the saga of British liberties or the world-wide unshackling of the Jews from the ghettoes of Europe.

K. Cadloff summarizes the legal background of the movement of freedom and equality of religion in the colony at this time,

"Sixteen years after the conquest, the Parliament of Great Britain, having finally assumed control of all North American territories ceded by the Treaty of Paris (Feb. 10, 1763), saw fit to consolidate all the colonies so ceded into one province: Quebec. The enabling legislation is the Constitution Act, 1775, or 'An Act for making effectual provision for the government of the province of Quebec in North America,' 14 Geo. III, c. 83, by which the boundaries of Quebec extend from the Connecticut to the junction of the Ohio and Mississippi rivers.

"Within this vast territory, the Crown's Roman Catholic subjects were, by s. v, to have complete freedom of religion, subject only to the King's supremacy. Under s. vi, however, provision is made 'for the encouragement of the Protestant religion,' which is to include the establishment and maintenance of Protestant clergy. It must also be noted that s. xv specifically exempts religious ordinances from the powers of the newly-formed legislative council.

"The next statute of interest is the Constitution Act, 1791, 31 Geo. III, ss. xxxii. Among other provisions, this law proclaims the existence of Upper and Lower Canada and, by ss. xxxiii and xxxv, continues in force all parts of the previous Act not specifically repealed by the present one. Further, ss. xxxvi to xli, set out procedures whereby Protestant rectories are to be established. The legislative council is then given the power to adopt, amend, or repeal these provisions only with Imperial consent.

"It is of interest to us that this was actually done later, in 1851, as we shall see with the passage of the Rectories Act, SC 1851 (14 and 15 Vict), c. 174, wherein the sections pertaining to the establishment of rectories are consolidated and are combined with an important 'freedom of worship" provision." (National Archives Canadian Jewish Archives, Research Paper)

IN LOWER CANADA

It is possible to be precise about the Israelites of Quebec at this time because the Legislative Assembly of Lower Canada published a detailed population census of the colony as of 1831 in the appendix to its Journals for that year.

This census reports three Jews living in the District of Quebec (two of them in the Upper Town and one in the Lower Town); 20 were living in Berthier; 48 in Montreal (24 in the East Ward and 28 in the West Ward); 12 in Chatham Township in the County of Two Mountains, and one Jew in Soulanges, County Vaudreuil; 18 Jews were residing in Machiche Parish in county of St. Maurice, and one in Masquinongé, for a total of 19 in the county of St. Maurice -- this in the midst of 403,000 Roman Catholics, 34,000 Anglicans, 15,000 communicants of the Church of Scotland and 7,000 Methodists. (Vindicator, March 27, 1832)

The total for the colony was 107, more widely distributed geographically than they were ever to be again.

We shall note that there were virtually no Jews in Upper Canada at the time.

Not that Quebec Jews were suffering from any particular impediments. Militia commissions were in effect open to them, and they were able to take the oaths requisite for practice before the bar. But the shadow of disabilities existed, and some of them may have already been thinking of treading the path Ezekiel Hart had walked.

The Lower Canada story begins in the summer of 1830 with another Hart.

Unfortunately the detailed circumstances of this beginning are not yet clear to historians. Possibly an examination of the Jewish social and political record of Trois-Rivières, quite different from that of Montreal, will explain just why and just then Samuel Becancour Hart was singled out for an honour which was also a responsibility. Such research may also shed a light on the reasons and the personalities behind the opposition to this official initiative.

It may well have been that the efforts of Benjamin Hart and of the congregation to secure official status for the Jewish community encouraged the Three Rivers Hart brothers to initiate the effort for wider rights. (Canadian Jewish Archives, new series, no. 24)

This might explain the initiative of "divers persons professing the Jewish religion" in taking action before the legislature a year later, as we shall see, action parallel to that of S.B.Hart.

Some circumstances being thus unclear we nevertheless have the documentary heritage.

Samuel Becancour Hart

Samuel Becancour Hart, eldest son of Ezekiel Hart. bore an interesting name. The Seigneury of Becancour had come into the possession of Aaron Hart in 1791-95. When the patriarch died in 1800 Ezekiel Hart inherited it and eventually Samuel Becancour Hart became the Seigneur de Becancour. (Gerard Malchelosse. "La Famille Pomereau et ses alliances" in Les Cahiers des dix, vol. 29, 1964. Pp. 202-22) Even the unfriendly Malchelosse states that this seigneury, like many others, was alienated from its earlier owners because the French gentry, although cut off from allowances and grants from France, insisted on living in a style they could not afford after the Conquest. (Canadian Jewish Archives, new series no. 15, Pp. 47-48; no. 20, Pp. 183, 227)

Robert Rumilly refers to Hart as a brilliant warrior in the war of 1812-14 who distinguished himself at the engagement of Lundy's Lane, "the most murderous battle of the war."

By 1821 we find the business firm of Ezekiel Hart and Son a partnership of Samuel Becancour with his father. (Quebec Gazette, July 5, 1821)

At the suit of Samuel Hart the sheriff advertised the sale of the property of Jean-Baptiste Bricault. (Ibid., Nov. 7, 1822)

He was named lieutenant of the 7th Battalion of the Townships in the summer of 1822. (Ibid., July 18, 1822)

He had been chosen by the grand jury to serve on the Fire Society. (La Minerve, Aug. 11, 1831)

Offer of a Commission

Even as the synagogue legislation was at its last stages Lord Aylmer, the governor, took the initiative in granting a Jewish citizen the privilege of an office. It concerns Samuel Becancour Hart, the first-born son of Ezekiel Hart.

On July 26, 1830 the Colonial Secretary Lieut.-Col. C. Yorke sent S.B. Hart, on the order of Sir James Kempt, the following printed circular letter, both in English and in French,

"His Excellency the Administrator of the Government being about to issue a new Commission of the Peace for the District of Quebec, I have received His Excellency's commands to inquire, whether you are disposed to undertake the regular performance of the duties of a Magistrate in the said District and will qualify as such, under the provisions of the Act passed in the last Session of the Provincial Parliament, entitled, 'An Act for the qualification of Justices of the Peace.'

"A copy of the third section of the said Act, by which the qualification is fixed, and also of the 8th. and 9th. sections, in explanation thereof, are hereunto subjoined for your information, and should you be disposed to qualify and to perform the active duties of a Magistrate, His Excellency commands me to acquaint you that your name will be included in the new Commission of the Peace.

"It is desirable, however, that I should be favoured with an answer to this letter at your earliest convenience, it being His Excellency's intention to issue the new Commission with as little delay as possible." (MG 11, Q series, vol. 195, p. 2)

Sections 3, 8 and 9 of the act specify the property qualification of justices of the peace under the new act.

Justice W.R. Riddell explains that the circular letter was sent because of the death that year of the reigning monarch, George IV. On his demise "the Commissions of the Peace granted in his name throughout Lower Canada, as throughout most of the British Empire, were to come to an end, and a new Commission of the Peace formed. A Commission, being granted by the King, naturally came to an end when the King died. But the inconvenience experienced by having no Justices of the Peace until a new Commission could be issued, led Parliament in 1701 (by what we lawyers call the Statute of I Annae, Stat. 1, cap.8), to make the Commissions continue until six months after the demise of the Crown.

"This period of six months was supposed to be sufficient to enable the new Monarch and his advisers to select the proper men to vest with the authority of a J.P. -- to examine into the qualifications, financial and otherwise, of those to be entrusted to act as such. Very considerable property qualifications were required; and it was not every worthy man who had sufficient of this world's means to satisfy the requirements." (Canadian Jewish Review, July 28, 1933)

Samuel B. Hart answered the circular letter inquiry of July 26, 1830 two days later from Three Rivers acknowledging the letter "and in reply have to state that I have no objections to act as a magistrate for this district and can qualify as such."

Second Thoughts

One element in our ignorance of the forces operative in the colony is why, after communicating with S.B. Hart, the governor found it necessary to seek the opinion of the attorney general.

He received the following reply on Aug. 13, 1830,

"The Attorney General presents his most respectful compliments to His Excellency Sir James Kempt.

"In compliance with His Excellency's desire, we have considered the question as to the legality of introducing a Jew into the Commission of the Peace and am clearly of opinion that a Jew cannot take the Oaths that are required to be taken by a Justice of the Peace, and cannot therefore be appointed to that office."

The governor submitted the list of prospective justices of the peace to the Executive Council, and apparently included the name of Samuel Becancour Hart. The Council reported to him on Oct. 9, 1830:

"To His Excellency Sir James Kempt G.C.B. Lieut. General and Commander of His Majesty's Forces in the Province of Lower Canada and Administrator of the Government of the said Province, etc., etc., etc.

"Report of a Committee of the whole Council.

"Present: The Honble. Mr. Justice Kerr in the chair, Mr. Smith, Mr. De Lery, Mr. Stewart, Mr. Cochran and Mr. Attorney General Stuart.

"Re Your Excellency's reference respecting new Commission of the Peace.

"May it please Your Excellency... Having examined the different lists of persons qualified under the late Provincial Statute, to assume upon themselves the duties of Justices of the Peace, the committee are not aware of any objection to these being included in the Commission of the Peace, excepting as to Samuel B. Hart, who being a Jew, they are of opinion, cannot take the Oath of qualification and ought not to be included in the proposed Commission.

"All which is respectfully submitted to Your Excellency's wisdom."

Later, on Feb. 17, 1834 Aaron Ezekiel Hart recalled this before the Kimber committee, when asked,

"Did you hear of any doubts having existed previous to the passing of the Act 1st Will. IV. Cap. 57, as to the admittance of Jews to Office in this Province?-- Yes, I have; by the Executive Council under the administration of Sir James Kempt. It appeared that Mr. Samuel B. Hart of Three Rivers, had been named by the then Administrator to discharge the duties of Justice of the Peace in the District of Three Rivers, on which occasion the Executive Council thought fit to advise the Administrator to strike out the name of Mr. Hart on account of being of the Jewish persuasion, and incapable of holding Office in the Province."

S.B.H. is Informed

On Oct. 19 Col. Yorke wrote to Mr. Hart at Three Rivers:

"His Excellency the Administrator of the Government having deemed it proper to lay before the Executive Council the List of Persons that it is proposed to insert in the new Commission of the Peace for the District of Three Rivers, in which List your name was inserted; A Committee of the whole Council have reported to H.E. as their opinion that a person professing the Jewish Faith cannot take the Oath of Qualification and consequently ought not to be included in the Commission; and H.E. having been also advised to the same effect by the Chief Law Officer of the Crown, I have received his command to signify the same to you, and to inform you that H.E. will feel necessarily obliged, under these circumstances, to omit your name in the Commission, understanding that you are of that persuasion."

These letters were also published in the Montreal Gazette of Nov. 11, 1830, P.3, which noted that this "correspondence has appeared in different papers of this Province." (More recently reprinted as historic documents by the Suburban of Apr. 5, 1967)

Proposes to Fight

Mr. Hart was not letting the matter rest. On Oct. 29, 1830, he wrote Lt. Col. I.B. Glegg,

"On the 27th July last I had the honour to receive from Col. Yorke, on behalf of H.E. Sir James Kempt, a printed circular wishing to know if I would qualify to act as a Magistrate for this District -- On the 28th I returned an answer to Lt. Col. Yorke in the affirmative. On the 20th Oct. I received a letter from Col. Yorke, under date of the 19th, stating that a Committee of the Executive Council, as well as the Chief Law Officer of the Crown, had given in their respective Reports, that I could not, on account of my Religion, be nominated as a Magistrate.

"As I intend to memorial H.E. Lord Aylmer, and the House of Assembly on the subject, it would be necessary for me to have copies of both these respective Reports to enable my completion of this intended Memorial. -- I would feel particularly obliged that you would communicate this letter to H.E. Lord Aylmer, that he would order copies of said Reports to be forwarded to me without delay."

Col. Glegg replied on Nov. 2,

"I have not failed to lay before H.E. Lord Aylmer your letter of the 29th Ult., stating your intention of addressing Memorials to H.E. and to the House of Assembly upon that subject of an occurrence which took place during the Administration of H.E.'s immediate predecessor, and desiring to be furnished with copies of certain Reports of the Exc. Council and of the Attorney General, connected with that occurrence; -- And I have been directed to signify to you in answer, that H.E. is prepared to give prompt and due attention to any Memorial which you may think fit to address to him. With regard however to the required copies of the Reports of the Executive Council and of the Atty. Genl., H.E. desires me to say that, as great inconvenience to the Public Service might arise from the granting to individuals of copies of official reports called for by the Executive with a view to guide it proceedings in matters of Law and Form, he finds himself under the necessity of declining to accede to your request in this instance."

Petition to His Majesty

But Hart's next démarche was not to the Assembly. Instead he addressed his petition "To the King's Most Excellent Majesty.

"The Petition of Samuel Becancour Hart of the Town of Three Rivers in the Province of Lower Canada most humbly showeth,

"That your humble petitioner is a natural born subject of Your Majesty, that he professes the Jewish Religion, and that he has a large estate in the District of Three Rivers where he and his father Ezekiel Hart were born and have constantly resided.

"That he is descended from Aaron Hart, a British born subject who came over from England to this Province at the conquest of Canada by the arms of Great Britain.

"That the family of your Majesty's Petitioner have uniformly supported an honourable character as loyal subjects and as useful and influential members of this community.

"That the right of holding land has never been disputed in this Province to persons of the Jewish Faith, and that their legal admissibility to office did not until now become the subject of controversy.

"But it has become the painful duty of your Petitioner to complain to Your Majesty of certain recent acts of the Executive Government of this Province, by which he and all persons professing the Jewish Religion are excluded from office in a manner very public and mortifying, and which Your Majesty's Petitioner could not bear in silence without forfeiting every claim to his own esteem and to the good opinion of his fellow subjects, particularly his brethren of the Jewish Faith.

"On the 26th of July last past a letter was written to Your Majesty's Petitioner by Lieut. Colonel Yorke, Secretary to His Excellency Sir James Kempt, Your Majesty's Administrator of the Government of Lower Canada, enquiring whether Your Majesty's Petitioner was disposed to undertake the regular performance of the duties of a Magistrate in the said District of Three Rivers and would qualify to act as such under the Provisions of an Act passed in the last session of the Provincial Legislature, and acquainting Your Majesty's Petitioner

that if he was disposed to qualify and to perform the active duties of a Magistrate, his name would be inserted in the new Commission of the Peace.

"In this letter Your Majesty's Petitioner answered on the 28th day of the same month of July, that he was disposed to undertake the regular performance of the duties of a Magistrate and would qualify as such if it chose to please His Excellency to command his service.

"And to the great and painful surprise of Your Majesty's Petitioner he received a letter from the same Lt. Colonel Yorke dated the 19th of October last, informing him that His Excellency the Administrator of the Government, having deemed it proper to lay before the Executive Council the list of persons that it is proposed to insert in the new Commission of the Peace, for the District of Three Rivers in which list his name was inserted, a Committee of the whole Council have reported to his Excellency their opinion that a person professing the Jewish Faith cannot take the Oath of Qualification, and consequently ought not to be included in the Commission, and that His Excellency having also been advised to the same effect by the Chief Law Officer of the Crown, would feel necessarily obliged to omit the name of Your Majesty's Petitioner in the Commission.

"And accordingly the name of Your Majesty's Petitioner has been omitted in the Commission of the Peace for the District of Three Rivers merely because Your Majesty's Petitioner professed the religion of his fathers, that religion in which he had been born and educated, which inculcated the sacred duties of Adoration to God and loyalty to the King: and this in an age of liberality and universal tolerance and in a country where a foreign Jew naturalized by a residence of seven years is admissible to every office and in which, Your Majesty's Petitioner is informed the disabling laws of England were never introduced.

"Therefore most Gracious Sovereign, your Petitioner humbly implores Your Majesty and fervently prays that in your Royal Justice and Wisdom Your Majesty will be pleased to relieve him and others of his religious belief from all incapacities to which they are thus subjected by the illegal acts of the Colonial Executive."

Hart signed this document and sent it the same day to Lord Aylmer, Governor of Lower Canada, with a petition:

"The Petition of Samuel B. Hart of the Town of Three Rivers sheweth

"That your Petitioner having been advised to petition our Sovereign Lord the King on the subject of his having been excluded from the last Commission of the Peace, by reason of his professing the Jewish Religion, he had prepared and signed his humble petition to His Majesty which he respectfully transmits herewith to Your Excellency through your Civil Secretary.

"And he humbly prays that it may please Your Excellency to transmit the said humble petition to His Majesty's Minister, in order that the same may be laid at the foot of the Throne. And he also humbly prays that Your Excellency may be pleased to transmit to His Majesty's Ministers with his said petition copies of the correspondence, reports and proceedings therein and thereby referred to, in order that His Majesty may be enabled to give his Royal judgments and decision thereon."

This was acknowledged on Nov. 11 by Lt. Col. Glegg:

"Having submitted to His Excellency the Administrator of the Government your letter of the 5th instant enclosing a Petition to the King, and praying that his Lordship would forward the same to His Majesty's Ministers, I am commanded to inform you that the said Petition, together with all the accompanying documents alluded to in your Memorial, will be forthwith transmitted to the Secretary of State for the purpose of being laid before His Majesty."

Indeed, the following day, on Nov. 12 the petition of S.B. Hart and copies of all the documents were sent to the Rt. Honorable Sir George Murray in London, Lord Aylmer's letter read:

"I have the honor of transmitting to you herewith by the desire of Mr. Samuel B. Hart of Three Rivers a Petition which he had desired me to forward for the purpose of being laid before His Majesty.

"It appears that when the last appointment of Justices of the Peace in the Province of Lower Canada was in progress, Mr. Hart's name was included in a list transmitted to the Administrator of the Government, of persons considered fit to hold the Commission, and a letter (circular) was addressed to that gentleman desiring to be

informed whether he was willing to act, and to qualify himself by taking the prescribed oaths. -- He answered in the affirmative: whereupon (it being well known that Mr. Hart professed the Jewish Faith) a reference was made to the Executive Council, and the Attorney General of the Province, with a view of ascertaining his eligibility. -- The answer of both being in the negative, a letter was addressed to Mr. Hart, acquainting him that, being of the Jewish Religion, his appointment as Justice of the Peace could not take place. -- Shortly after the receipt of this last mentioned letter by him (Sir James Kempt having just left the country for England) Mr. Hart addressed a letter to my Civil Secretary, to which an answer was immediately returned by my direction. -- Copies of these two letters, together with copies of the correspondence previous to my assumption of the Government, are now enclosed according to the annexed schedule, they contain all the information that it is in my power to furnish on the subject of Mr. Hart's Petition.

"Documents connected with the case of S.B. Hart of Three Rivers.

1.	July 26	Copy of a circular letter addressed to S.B. Hart,Esq. of Three Rivers.
2.	Aug. 1	Copy of the Attorney General's letter.
3.	Oct. 9	Copy of the opinion of the Council on the case of Mr. Hart.
4.	-- 19	Copy of Col. Yorke's letter to Mr. Hart communicating the opinion of the Council.
5.	-- 29	Copy of Mr. Hart's letter to Lt. Col. Glegg on the subject of Lt. Col. Yorke's letter.
6.	Nov. 2	Copy of letter from Lt. Col. Glegg to Mr. Hart.
7.	Nov. 5	Copy of Petition to His Excellency Lord Aylmer from S.B. Hart Esq. of Three Rivers.
8.	-- 5	Copy of Petition to His Majesty from S.B. Hart Esq. of Three Rivers.
9.	-- 11	Copy of letter from Col. Glegg to S.B. Hart of Three Rivers."

At this point it immediately became apparent to the few but far-sighted Jews in the colony that the time was propitious for general legislation for full rights for the Jews of Lower Canada (now Quebec). They decided to act in this matter.

But already a difference in tactics appeared between S.B. Hart of Three Rivers and other "divers persons professing the Jewish religion."

On Jan. 31, 1831, Mr. Neilson presented on their behalf a short petition to the Assembly complaining in general terms that they had been subject to exclusion and deprived of their rights. The document is important enough to justify reproduction in full from the Journals of the Legislative Assembly.

"A Petition of divers person professing the Jewish Religion, whose names are thereunto subscribed, was presented to the House by Mr. Neilson, and the same was received and read; setting forth: That the just and liberal disposition of the Government of Great Britain, evinced towards the people professing the Jewish Religion, by two Acts of Parliament, one of the thirteenth year of the Reign of His late Majesty King George the Second, chapter seven, and the other of the thirteenth year of the Reign of His late Majesty King George the Third, chapter twenty-five, encouraged the Petitioners to believe that their Religious feelings and principles present no sufficient objection to their taking and enjoying any Office or Place of trust, either Civil or Military within this Province; That nevertheless, persons professing the Jewish Religion, have hitherto been subject to a system of injurious exclusion, and deprived of those Civil rights and capacities, which they humbly conceive to be the common inheritance of every British Subject within his Majesty's Colonies in America. The Petitioners therefore, humbly pray, that the House will take their case into serious consideration, and afford them such relief in the premises as in its wisdom shall seem meet."

John Neilson, "one of Ezekiel Hart's best friends" (C.J.A., new series, no. 18, Pp. 393-95, 409-10; no. 20, P. 153) represented Quebec County in Assembly Mar. 28, 1818 to Sept. 2, 1830; Oct. 26, 1830 to Oct. 9, 1834; in Assembly of Canada Apr. 4, 1841 to Sept. 23, 1844; on Executive Council from Aug. 22, 1837 until he died, Feb. 1, 1848. He was a member of the Special Council convened in 1838 to approve the union of Upper and Lower Canada during the three years of existence, from Apr. 2, 1838 to Feb. 10, 1841. He and Jules Quesnel were the only members to vote against the address of Governor Poulett Thomson who proposed the union on Nov. 13, 1839.

Justice Riddell calls John Neilson "that friend of the Jew as of all who were treated with injustice."

D.B. Viger

On Feb. 1, 1831 Denis Benjamin Viger presented to the Legislative Council the petition of divers persons professing the Jewish religion in Lower Canada praying for relief.

He also presented, the same day, a petition from Samuel Becancour Hart of Trois-Rivières complaining of certain grievances and praying for relief.

The names of Neilson and of Viger associated with this Jewish movement gave it more than distinguished patronage. These men were potent political leaders in the legislature. Viger was one of the most important lieutenants of his cousin Papineau; it was in Viger's law office that Papineau pursued his legal studies. Viger's sponsorship of the Jewish petition in effect gave the petition the imprimatur of the popular "chief" of the age.

Viger was one of the outstanding political figures of Lower Canada for half a century. He entered the Legislative Assembly of Lower Canada, representing Montreal West, on June 18, 1808 and sat for that county until March 1, 1810; on Apr. 21, 1810 he became the member for Leinster, until Feb. 29, 1816, and on Apr. 25, 1816 to Sept. 2, 1830 for Kent. In Nov. 1829 he was named to the Legislative Council where he sat until its dissolution on March 27, 1838. When the two Canada colonies united to form the Province of Canada, Viger was selected to the Legislative Assembly for Richelieu, Apr. 8, 1841 - Sept. 23, 1844 and for Trois-Rivières, July 14, 1845 - Dec. 6, 1847. He was president of the Executive Council from 1843-46 and member of the Legislative Council from Feb. 17, 1848 to March 17, 1858. He passed away in 1861.

He is described by G. Filteau as "lawyer, journalist, captain in the militia, publicist, land-owner, founder of newspapers, member of the legislative council." (Histoire des Patriotes)

The petitions which he presented were ordered laid on the table.

S.B. Hart's Petition

On Feb. 7, 1831 S.B. Hart submitted to the Assembly his own separate petition, outlining the details of his own complaint at length.

"A Petition of Samuel Becancour Hart, of the Town of Three Rivers, whose name is thereunto subscribed, was presented to the House by Mr. Neilson, and the same was received and read; setting forth: That the Petitioner is a native of Three Rivers; that he professes the Jewish Religion, and that he holds considerable landed property in this Province: That he is descended from Aaron Hart, Esquire, a British born subject, who came over from England to this Province at the conquest of Canada by the Arms of Great Britain: That the family of the Petitioner have uniformly supported an honorable character as loyal subjects and as useful and influential members of the community of Three Rivers: That the right of holding lands has never been disputed to persons of the Jewish Faith, and that their legal admissibility to office did not until now become the subject of controversy: But it has become the painful duty of the Petitioner to complain to the House of certain recent acts of the Executive Government of this Province, by which he and all persons professing the Jewish Religion are excluded from office in a manner very public and mortifying, and which the Petitioner could not bear in silence without forfeiting every claim to his own esteem, and to the good opinion of his fellow subjects: That, on the twenty sixth of July last past, a Letter was written to the Petitioner by Lieutenant Colonel Yorke, Secretary to Sir James Kempt, then Administrator of the Government of this Province, enquiring whether the Petitioner was disposed to undertake the regular performance of the duties of a magistrate, in the District of Three Rivers, and would qualify to act as such under the provisions of an Act passed in the last Session of the Provincial Legislature, and acquainting the Petitioner that if he was disposed to qualify and to perform the active duties of a Magistrate, his name would be inserted in the new Commission of the Peace: That to this Letter the Petitioner answered, on the twenty-eighth day of the same month of July, that he was disposed to undertake the regular performance of the duties of a Magistrate, and would qualify as such, if it should please His Excellency to command his services: And that to the great and painful surprise of the Petitioner he received a letter from the same Lieutenant Colonel Yorke, dated the nineteenth of October last, informing him that His Excellency the Administrator of the Government

having deemed it proper to lay before the Executive Council the List of persons that it was proposed to insert in the new Commission of the Peace for the District of Three Rivers, in which List his name was inserted, a Committee of the Council had reported to His Excellency their opinion, that a person professing the Jewish Religion could not take the Oath of Qualification, and consequently ought not to be included in the Commission; and that His Excellency having also been advised to the same effect by the chief Law Officer of the Crown, would feel necessarily obliged to omit the name of the Petitioner in the Commission; and that accordingly the name of the Petitioner has been omitted in the Commission of the Peace for the District of Three Rivers, merely because the Petitioner professes the Religion of his father, -- that Religion in which he was born and educated, which inculcates the sacred duties of adoration to God, and loyalty to the King, and this in an age of liberality and universal tolerance, and in a country where a foreign Jew naturalized by a residence of seven years is admissible to every office, and into which the Petitioner is informed the disabling Laws of England were never introduced. Therefore the Petitioner humbly implores the House to take case into their serious deliberation, and relieve him as well as his brethren from any disabilities they at present are subject to, by the illegal acts of the Colonial Executive."

The petition was printed at Three Rivers in English and French broadsides, on Jan. 31, 1831 (copies at McCord Museum).

R.A. Davies notes a 4-page imprint, entitled Petition of Samuel Becancourt Hart, a Jew, Complaining of Certain Acts of the Executive Government by which he and all other Jews are Excluded from Holding any Public Office, and Praying that all Jews may be Relieved from any Disabilities they are at Present Subject to by the Illegal Acts of the Colonial Executive, published at Quebec in 1831.

Mr. Hart's petition was immediately referred to the Standing Committee on Grievances and 150 copies were ordered for the use of the members of the House, and the petitions were referred to standing committees.

March 16, 1831

On March 16, 1831 the Assembly,

"Ordered, That Mr. Neilson have leave to bring in a Bill to declare persons professing the Jewish Religion entitled to all the rights and privileges of the other Subjects of His Majesty in this Province."

"He accordingly presented the said Bill, and the same was read the first time; and ordered to be read a second time on Friday next." (also in Canadian Courant, March 23, 1831)

March 18, 1831

On the 18th of March, 1831,

"A Bill to declare persons professing the Jewish Religion, entitled to all the rights and privileges of the other Subjects of His Majesty in this Province, was, according to Order, read a second time."

"Ordered, That the said Bill be engrossed." (also in Canadian Courant, March 23, 1831)

March 19, 1831

The following day, March 19, 1831,

"An Engrossed Bill to declare persons professing the Jewish Religion, entitled to all the rights and privileges of the other subjects of His Majesty in this Province, was read for the third time.

"Resolved, That the Bill do pass.

"Ordered, That Mr. Neilson do carry the said Bill to the Legislative Council, and desire their concurrence."

March 21, 1831

When this message from the Legislative Assembly reached the Legislative Council on March 21, 1831 by Mr. Neilson with the "Bill intituled 'An Act to declare persons professing the Jewish Religion entitled to all the rights and privileges of the other subjects of His Majesty in this Province,' to which they desire the concurrence of this House, this bill was read for the first time.

"This Bill was read for the first time."

March 22, 1831

The following day, on March 22, 1831, in Legislative Council,

"Hodie 2a, vice lecta est Billa, intituled, 'An Act to declare persons professing the Jewish Religion entitled to all the rights and privileges of the other subjects of His Majesty in this Province.'

"Ordered, That the said Bill be committed and to a Committee of the whole House on the next sitting day."

March 28, 1831

On March 28, 1831, the Council, "according to order, was adjourned during pleasure, and was put into a Committee of the whole House on the Bill, intituled, 'An Act to declare persons professing the Jewish Religion, intitled to all the rights and privileges of the other subjects of His Majesty in this Province.'

"After some time the House was resumed, and the Honorable Mr. Viger reported from the said Committee 'That they had gone through the said Bill, and had directed him to report the same,without any amendment.'

"The House agreed with the Committee.

"Ordered, That the said Bill be read for the third time, on the next sitting day."

March 29, 1831

On March 29, in the Legislative Council,

"Hodie 3a, vice lecta est Billa, intituled, 'An Act to declare persons professing the Jewish Religion, intitled to all the rights and privileges of the other subjects of His Majesty in this Province.'

"The question was put,

"Whether this Bill shall pass?

"It was resolved in the affirmative.

"Ordered, That one of the Masters in Chancery do go down to the Assembly and acquaint that House, that the Legislative Council have passed this Bill without any amendment."

The same day, the Hon. Mr. De Léry, one of the Masters in Chancery, brought to the Assembly a message from the Legislative Council that that chamber had passed the bill without any amendment.

March 31, 1831

On March 31, 1831 the Governor informed the Council and the Assembly that he reserved the said Bill for the signification of His Majesty's pleasure thereon.

On April 11, 1831 Governor Aylmer transmitted the bill with several others to Viscount Goderich -- bills he had "reserved for the signification of His Majesty's pleasure."

1 William IV, cap. 57

It is a matter of some importance to note that more than a year passed before it was "assented to by His Majesty in His Council" on Apr. 12, 1832. The Royal Assent was signified by the proclamation of His Excellency the Governor in Chief on June 5, 1832, when 1 Wm. IV, cap. 57, "An Act to declare persons professing the Jewish Religion entitled to all the rights and privileges of the other subjects of His Majesty in this Province" became law.

The brief declaratory act, denominated Cap. 57, 1 William IV, which had undergone the legislative process so smoothly, may well be cited in full:

"An Act to declare persons professing the Jewish Religion intitled to all the rights and privileges of the other subjects of His Majesty in this Province.

"Whereas doubts have arisen whether persons professing the Jewish Religion are by law entitled to many of the privileges enjoyed by the other subjects of His Majesty within this Province: Be it therefore declared and enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, 'An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," and to make further provision for the Government of the said Province of Quebec in North America.' And it is hereby declared and enacted by the authority aforesaid, that all persons professing the Jewish Religion being natural born British subjects inhabiting and residing in this Province, are entitled and shall be deemed, adjudged and taken to be entitled to the full rights and privileges of the other subjects of His Majesty, his Heirs or Successors, to all intents, constructions and purposes whatsoever, and capable of taking, having or enjoying any office or place of trust whatsoever, within this Province."

It stands verbatim in the Revised Acts and Ordinances of Lower Canada, 1845, Pp. 75, 33.

The Law Continues

In 1861 the legislature of the Province of Canada in its Consolidated Statutes for Lower Canada. which now proclaimed under the authority of its Act 23 Vict., cap. 56, reaffirmed in chapt. 34 on personal rights, section 7, the political rights of Jews and citing 1 William IV, chap. 57.

It also cited the provincial act 4-5 Vict., chap.7 on naturalization as the source of these political rights.

The same Consolidated Statutes in Chap. 20, sect. 17, with the intention of assuring family peace and to establish the different civil rights of Her Majesty's subjects who reside in Lower Canada, by means of uniform and authentic registration of baptisms, marriages and burials in each parish church in the Roman Catholic communion, as well as in every Protestant church or congregation in Lower Canada, the priest or minister who serves it shall keep two registers with the same contents, each of which shall be considered equally true...

By section 17 of this chapter the law declared that this act also applies to the different religious communities and denominations in Lower Canada named in this section and to their priests and ministers who may validly celebrate marriages and obtain and keep registers under the authority of this subject to the provisions of the laws mentioned in regard to each of them respectively, just as if these communities were named in the first part of the present act.

Among these denominations, the fourth were the Jews, subject to the provisions of 9 Geo. IV., chap. 75.

The act was reaffirmed without change in the Revised Acts and Ordinances of Lower Canada (1945) published by the authority of the Commissioners for such revising.

The Lower Canada act of 1832 and the later Province of Canada act of 1851 are in effect in Canada to this day because article 129 of the B.N.A. Act gives force of law to all provincial acts in force. (Paul Fontaine. "L'Etat canadien et le christianisme," in Revue du droit, Nov. 1931, Pp. 158-59)

THE LAW IS CHALLENGED

However the matter of Jewish rights in Lower Canada was not completely resolved, and particularly not in Trois-Rivières.

After the passing of this Act, the name of Samuel Becancour Hart of that town was again inserted, on Apr. 24, 1833, in the list of Justices of the Peace to be named, and he was again notified to this effect, as were several other Jewish candidates. It seemed clear that the law required each of them to qualify for this position and to take the oath of office within six months.

At the same time, his uncle Benjamin Hart and Mr. Moses Judah Hays, both of Montreal, were also to be named Justices of the Peace for Montreal, and were also informed accordingly.

The name of Benjamin Hart is by now central in our history. His biography, particularly after he removed to Montreal, is virtually the history of the community. An important letter which he wrote to Sir John Russell, Secretary for the Colonies, on July 14, 1840 is out of chronological order here but adverts usefully to his civic record during the stormy period eight years earlier.

"With respect to my appointment as a Magistrate, I beg leave to state, Sir John Colborne was too well aware of my standing amongst English, Scotch and Irish inhabitants of Montreal, to have removed my name from the Committee of the Peace, and I think I may with all safety refer your Lordship to Lord Seaton for the truth of my assertion.

"Amongst other arduous duties and offices, I have been call'd on to fill, has been that of doing the duties of a grand Juror on the Grand Inquest of the District of Montreal and Three Rivers uninterruptedly for a space of near forty years, a duty my Lord, which has absorbed much of my valuable time, but which I again repeat I have freely awarded to Her Majesty's Government, whenever called upon...

"I trust My Lord in this simple narration of facts, I have established a case worthy of your official consideration, and I also look forward to the hopes that Your Lordship will lay this statement of facts before Her Majesty; and consider my services have entitled me a signal mark of Her Majesty's gracious approval of my Public Acts." (PAC, ser. Q. vol. 277, Pt. 2, P. 204; Canadian Jewish Archives, new series nos. 15-16 and 19-20 passim; no. 24, Pp. 1-3)

By the same token we know of Moses Judah Hays who was also to be thus honoured. (CJA, new series no. 19, Pp. 28, 105; no. 20, Pp. 195, 241-63; Aline Gubbay and Sally Hooff. Montreal's Little Mountain, A Portrait of Westmount. 1979, Pp. 38-39)

But two years earlier Hays, on Feb. 8, 1831 petitioned for the right to operate a steam ferry boat between Montreal and Longueuil. On Feb. 19 a special committee of the House reported negatively on his petition.

The two Montreal candidates immediately signified their acceptance of the honours.

Question is Raised

Suddenly the right of Mr. Hays and Mr. Hart to accept the position of Justice of the Peace in the light of existing legislation was brought into question. Was 1 William IV. Chap. 57 clear enough in enabling Jewish persons to accept this position since it did not specifically state that a Jew taking the oath of office could omit the standard formula at the closing of the oath, "Upon the true faith of a Christian?" It was even suggested that if a Jew were to take the oath of abjuration which was in this form he might be subject to prosecution.

Who raised the question?

The answer is not clear.

Doubts about the law were widely disseminated -- eventually to the legislature, but in the meantime to its Jewish beneficiaries of the act.

Attorney General Charles Richard Ogden was well known to the Hart family.

A letter from Ezekiel Hart to his brother Moses probably dates from the 1814 election at Three Rivers when Ogden was first elected to the assembly:

"There will be much opposition in the election for this town the 10th as well as in the country. I think Ogden runs a hard chance as they are against strangers. Renvoyez de Tonnancour runs a fair chance.

"Areli was much better last night, and is now quite well, had a hearty breakfast." (Archives of Seminary of Trois-Rivières, J-D-Q.)

He sat in the assembly from May 13, 1814 to 1824 and again from 1830-33.

Ogden later was member of the Special Council in 1840-41, the first cabinet of the Draper-Ogden government, and on the executive council, 1841-42. He represented Three Rivers in the union assembly from 1841 to 1844. He served as attorney general from 1841-42. Ogden died in 1866.

Who Raised It?

Mordecai Adolphus Hart, testifying under reserve as having served part of his law clerkship in the Attorney General's office, said, "I can state that since my departure from that office, it has come to my personal attention that the Attorney General had written a letter to Mr. Benjamin Hart and Moses Hays, advising them to decline acceding to the request of the Government, by reason of the impossibility of their taking the oath of abjuration...I moreover state that it was told me by Mr. Benjamin Hart."

Samuel Becancour Hart later testified before the Kimber Commission that he had also "learned through another channel that Attorney General Ogden had written Hays and B. Hart that they should not accept, and that he had also written Mr. O'Sullivan, the present Solicitor General, to induce these Gentlemen not to accept their appointments." He even accused Mr. Ogden directly of forcing them to secure an opinion contrary to their interests and rights.

There may even have been a suggestion that in accepting office under conditions of questionable legality and acting in office they might even be subject to criminal charges and to civil damages.

Who will want to judge whether the Montreal candidates were unduly timorous, whether they had been frightened by the law officers, or whether they were following a policy designed to receive from Quebec or from London the clearest formulation and assurance of right equal to those enjoyed by other citizens?

Aaron Philip Hart

In view of the situation in which he found himself, and also because this course had been suggested by the Attorney General, Benjamin Hart consulted his son Aaron Philip Hart, a young man who had recently entered law practice in Montreal.

The father might even have indicated which opinion he would welcome from his son. There was later evidence that before reaching their conclusion they had entertained other views on the question.

Aaron Philip Hart, eldest son of Benjamin, is recorded as having been born in Trois-Rivières in 1811; but his death certificate, signed by Rev. David Piza, states that "Aaron Philip Hart, of the City of Montreal, advocate, died on October 4, 1843, aged 35 years, and was buried by me on October 6, 1843 in the presence of Myer Solomons of the City of Montreal, notary, and of Moses M. Binley, advocate.", so that he must have been born in 1808. Historian Gerald E. Hart gives the date of his passing as 1852, while noting that others have given 1832 as the year. (G.E. Hart Papers in McCord Museum,McGill University, in his Manuscript Gleanings from Christie's History of Quebec; See also Canadian Jewish Archives, new series, no. 16, P. 122; no. 19, P. 95; no. 20, Pp.149, 195)

M. Edmund Gordon is in error in calling A.P.Hart the first Jewish lawyer in Canada . ("Political and Legal Aspects of Jewish History in Canada." 1959. P. 4) In fact, he was admitted to the Bar on December 28, 1830, preceeded by H.H. Judah in 1829 and by Aaron Ezekiel Hart. (F.J.Audet, "1842" in Cahiers des Dix, no. 7, P. 227); these latter four years before Jews in England won the right to practise law, according to Michael Brown. Jewish Foundations in Canada: the Jews, the French and the English. (Ph.D. thesis, University of New York at Buffalo. 1976. P.8.)

In 1833 his cousin Aaron Ezekiel Hart was slighting in his reference to Aaron Philip, in the course of his testimony: "he has scarcely been admitted but two years to the practice of law."

His youthfulness is highlighted by a court record that dates to the period of his admission to the bar. In March 1830 a bookbinder sued Mr. Benjamin Hart for £5 for work done for his son, Aaron Philip. The elder Hart contested -- and won -- the case on the ground that the son was a minor, and that the work had not been authorized by the father. (Report on King's Bench, Inferior Court, in Montreal Gazette, March 29, 1830)

He began his legal practice in Quebec City.

Pierre-Georges Roy, author of Les Avocats de la région de Québec (Levis, 1936. P. 216) recalls that A.P. Hart nearly lost his life in a fire in the Quebec house where his office was located. His friend Me. John Walker died in that fire. Soon after, A.P. Hart removed to Montreal.

We find him acting for Moses Hart in a minor case in 1832.

In April 1832 we find young Hart in a political role in Montreal. On the 12th of that month a public meeting took place at Lavoy's Hotel to elect a member for the West Ward. The editor of the Irish Vindicator was one of the candidates, so that it is not surprising to find the following contemptuous report in that paper of April 13, 1832:

"Aaron Philip Hart, a young gentleman of this city, presented himself to the meeting several times, but could not obtain a hearing. Mr. Hart's well-known effrontery has given such general disgust that all classes of the public seem determined to discountenance him. He was cried down with the most clamorous opposition....

"After Mr. Hart had been cried down three or four times, he again mounted the table, with a paper in his hand, as if to propose a resolution. This we learn, was for the purpose of having Mr. Walker put in nomination.

"Mr. Hart, however, was still unsuccessful in obtaining a hearing."

The report in La Minerve of April 16 is in the same vein and quotes the Vindicator.

His name appears on an 1832 list of registered Jewish residents as an advocate, past the age of 21. (Canadian Jewish Archives, original series, vol. 1, no. 1, Aug. 1955, P.3)

In September 1832 we find him among the signers of the formal petition calling for a regular meeting of the registered Jewish residents of Montreal for the election of trustees for the congregation. At the meeting held on October 15 he and his father were elected trustees. He participated again in the same procedure in 1837, when Justice Pyke ordered such a public meeting of the registered Jewish residents to be held on October 10, at the offices of the Montreal Water Works. We note his attendance at synagogue meetings in 1837 and 1838. Benjamin and A.P. Hart were again elected trustees.

A.P.Hart married Maria Tunnacliffe, daughter of Dr. R.C.Henderson of Augusta, Upper Canada, on August 22, 1833. Rev. R. Blakey officiated. (Gazette, Aug. 24, 1833, cited by Figler)

A.P.Hart purchased seat no. 11 in the new synagogue in August 1838 for £5.

His name appears again among the official petitioners for the 1842 meeting.

A remarkable letter from A.P. Hart to Benjamin Hart survives, dated May 14, 1840 to inform us to some extent of the mechanics and paperwork of the legal activity about this fateful process of equalization of rights.

It is an indignant complaint against a personal and professional affront by the congregation. The circumstances are not yet clear. The letter reads,

"I regret intensely to be compelled to call the attention of the President and trustees of the Congregation Shearith Israel of Montreal to the singular and most extraordinary course of conduct adopted relative to the legal proceedings which at times have been necessary connected with the Existence of the Congregation of Israelites in this city.

"Altho' I believe that I have ever been most ready and gratuitously to tender and exert my feeble abilities as a professional man towards the advancement of any of the views of the congregation. Altho' every document previous to the passing of the bill securing to the Jews of Lower Canada their immunity from oppression and a participation in the rights of their fellow subjects was framed by myself, notwithstanding that to my individual exertion the very appointment of only two persons of the Jewish Faith of Lower Canada to a place of Honour, may be ascribed, and that the very proceedings of our meetings were put in form by me, tho' not even present.

"Nay, more, that the Prothonotaries were but lately indebted to me for the amendment of the document so singularly composed by some other individual.

"I have been sedulously neglected, I know not at whose instance, in all cases where professional advice or assistance has lately been required.

"In a latter case I have even ascertained the fact that foreign aid has been required, and to you as president of the Corporation of Israelites of this city I now address myself as one of the Members of the Congregation requiring to know whether by the consent of the president and trustees of the Congregation the advice and assistance of a Christian Barrister has been called in when it might have been obtained in the person of a member of the Jewish Religion."

He added, "You will be kind enough to call a meeting of the Trustees for the purpose of submitting this memorandum to them."

British Rifle Corps

As we continue with our glimpses at the short career of A.P. Hart beyond the 1832 period which is our continuing concern, we find him involved in one of a series of important delicate civic activities which were to have very grave consequences within the decade: the mobilization of anglophone activists to support the forces of the government.

Gerald E. Hart, historian and loyalist to empire, is proud that the name of A.P.Hart occurs in "all these papers published by Christie (in his History) which record that Aaron Philip Hart was one of the four spokesmen for the petitioners who met on December 16, 1835 to form an association of eight hundred effective men, to be designated under the appellation of 'the British Rifle Corps.'

"That the individuals composing the said meeting being greatly desirous of following a mode of proceeding strictly constitutional, did on the 22nd day of December, unanimously resolve to memorialize Your Excellency, as His Majesty's representative in this Province, to obtain Your Excellency's sanction to the organization of 'The British Rifle Corps.'

"Your Memorialists further beg leave respectfully to assure Your Excellency, that the sole aim of His Majesty's subjects who are desirous of organizing themselves as above stated, and for which object Your Excellency's sanction is solicited, is to assist, as far as it may be in their power, to preserve inviolate the connection which exists between Great Britain and Lower Canada, and to maintain unimpaired the rights and privileges confirmed to them by the Constitution.

"Wherefore, your Memorialists, who were at the said meeting appointed to address Your Excellency, on behalf of His Majesty's said subjects, do most respectfully pray that Your Excellency will be pleased to sanction the formation of the British Rifle Corps in Montreal, and also the nomination of such officers as may be appointed in the said Corps by those whom Your Memorialists now represent."

To understand this activity which involved young Hart we need to appreciate that its import went far beyond the military.

The intention was much more political. It was one of the forms of physical strength that the Anglophone community mustered from time to time to bolster the colonial establishment, often under cover of imperial loyalty. At times the existence of paramilitary groups was intended, secondarily to this patriotism, to spur the constituted authorities to a greater militancy in the face of pressure or threats of disorder or of populist manifestations.

The history of these decades provides instances of such activities of violence by unorganized, unauthorized quasi-patriotic forces claiming to defend law and order -- yet themselves routing law and order.

The mentality of Quebec nationalism has registered these threats of violence, real or fancied, deeply throughout the decades. By the same token the authorities have also always feared the uncontrollable political forces which patriotism sometimes assumes.

Commenting on the meeting and the foregoing Memorial, Christie's History says:

"The menacing attitude assumed by the Assembly, and the hostile language used by members in the debates daily occurring in it, and seconded by that of their supporters throughout the Province, particularly in the District of Montreal, afforded just cause of alarm to the loyal population, who, deeming the Government criminally supine, began seriously to look to their defence independently of it. The spontaneous formation of a Volunteer Rifle Corps was proposed at Montreal, and immediately filled up by young men of that City, who, to legalise the corps, made a tender to the Governor of their services in case of need. The offer, however, was declined by the Governor-in-Chief, but the organization of the corps nevertheless proceeded, until the appearance of a proclamation putting it down took place, upon which the body dissolved itself.

"At a subsequent meeting of the 800 loyal Montrealers, they addressed the following remonstrance to the Governor-in-Chief: The Corps, in dissolving itself in obedience to the proclamation, caused the following to be presented to Lord Gosford on the occasion: 'Whereas Your Excellency having thought fit, "by and with the advice and consent of His Majesty's Executive Council" to suppress by Proclamation, an association in Montreal, under the denomination of the British Rifle Corps -- we, the late Committee thereof consequently beg to inform Your Excellency that, immediately on such proclamation having been known, a spontaneous dissolution of the Corps was effected.

"'Wherefore, it is hoped that Your Excellency, and such of His Majesty's Executive Council as advised Your Excellency in the adoption of such a measure, will duly appreciate the very tolerating and peaceable disposition of the large number of which the Corps was composed.

"'That Your Excellency has misconstrued the avowed determination of the British Rifle Corps to support and assist in maintaining the Constitution and British interests in this Province into acts subversive thereof; and that Your Excellency listened to the advice and consent of only such of His Majesty's Executive Council as are avowedly hostile to every British subject and British interest in the Province, are suppositions which the line of policy Your Excellency has adopted towards the British Rifle Corps, and the Gallicisms in Your Excellency's proclamation have rendered indubitable.

"'In conclusion, as Committee-men of the British Rifle Corps we must express to Your Excellency our regret that the day has arrived when, in a Colony conquered by British Arms, a body of loyal subjects has been treated as traitors, by a British Governor, for no other crime than that of rousing themselves to protect their persons and property, and to assist in maintaining the rights and privileges granted to them by the Constitution.'"

In his history of the period (MS in McCord Museum of McGill University) loyalist Gerald E. Hart comments on Christie's text,

"It is readily discernible who was the real author of the opposition to the formation of the British Rifle Corps, as Lord Gosford only reached Canada and took oath of Office as Governor General on Feb. 27, 1838, and the Rifle Corps was formed in Dec. 1835. The Executive Council, principally French-Canadian, was therefore the real opposants and not the British Governor. Another blunder of the Home Government in allowing them that power." (Original MS. unclear; dates inserted -- D.R.)

At the meeting the following resolutions were adopted: (Pp. 145-150)

"That this meeting considers it a duty to express its dissent from the opinion of His Excellency as conveyed in the answer of His Excellency, as conveyed in the answer of Mr. Secretary Walcott, to the memorial of the Committee of the British

Rifle Corps, that the connection between this Colony and the Mother Country (Great Britain) and our rights and privileges as British subjects, are not in danger!" (Comment: Of course not from the French Canadian's Executive Council's point of view. They allowed Sabrevois de Bleury to form his Company to shoot all Britishers, all the same. Strange politics, it must be confessed.)

"Resolved, that the treasonable language uttered by the Speaker of the House of Assembly Hon. L.J.Papineau in Committees, the revolutionary doctrines disseminated by different Members of the majority of the House of Assembly, and some members of the Legislative Council, among the quietly disposed Canadians, the perseverance of these 'would be' republicans to excite a spirit of hatred against British born subjects and British interests, and the unqualified manner in which they have expressed their determination, to exert themselves to their utmost to obtain the abolition of the Legislative Council and a separation from the Mother Country, fully warrant this meeting in dissenting from His Excellency, who considers that the connection and the rights and privileges mentioned in our Memorial, 'are not in danger.'"

Several resolutions of a similar character were adopted, one of which reads: "Resolved that a certain member of the House of Assembly (Sabrevois de Bleury) notorious for his revolutionary principles and who has the command of a Company, an already organized Rifle Corps in this City, did, on the 5 May 1835 address the following circular to the members of his company: 'Montreal May 5, 1835, Sir -- I request your attendance at drill this evening; I desire to know on whom I can depend, for Thursday next; being a holiday, the company will turn out to practise firing, and I will award a medal to the best shot. If you do not show more activity and zeal for the company, I am afraid it must be dissolved, to the great joy of our political enemies.

"'Yours & c.
Sabrevois de Bleury,
Captain.'"

Christie adds "that the political enemies here alluded to are the English, Irish and Scotch inhabitants of this Province, in opposition to those of French Canadian origin, and that the same individual, on a late occasion, with a portion of his company under arms, as his Excellency has been authentically informed, was guilty of conduct universally stigmatised as disgraceful to a soldier, and tending to a disturbance of the public tranquility."

"Resolved, that the fore-mentioned circumstances strongly demonstrate the determination which the revolutionary party has come to, of trampling under foot the liberties of British subjects. and of gaining an ascendency by physical force." (in another resolution, an organized force of 500 French Canadians entered a house and ill-treated a British subject). "The Governor does not seem to have acted in the same spirit with them as he did with the Britishers, for some unexplained reason. That the Speaker (Mr. Papineau) has on the floor of the House, during the present Session, declared his resolution to preserve in certain measures, in order to ensure a speedy dissolution of the connection between the Colony and the United Kingdom, and the establishment of republican institutions in Lower Canada, (what can be plainer to show the leader's intentions and treason for which he should have been hung, drawn and quartered?)."

The Archives of Canada preserve a copy of a petition which Hart submitted to Earl Gosford in London on January 9, 1836 together with Dr. F.C. Arnoldi, Francis Hunter, Robert Weir Jr. and Robert Mackay, "on behalf of themselves and others". His Majesty's faithful Subjects residing in Montreal acknowledging receipt of a reply to their former Memorial of the 23rd ultimo "in which His Excellency had stated that the Connexion between this Colony and the Mother Country and our rights and privileges as confirmed to us by the Constitution were not considered by Your Excellency to be in danger.

But Hart and his fellow-Memorialists "regret that they cannot participate in the opinion so entertained by Your Excellency.

"That in support of the dissent of your Memorialists they would beg leave to refer to the facts:-

"That the House of Assembly has repeatedly proclaimed a determination to effect a change in the Constitution of Government established in this Province, which cannot reasonably be looked for as long as the existing form of Government in the British Empire is preserved, and which, if effected, will inevitably cause a speedy separation of the Colony from the Mother Country.

"It has not hesitated to use the threat that, as soon as an increase in the Provincial Population will justify the attempt, that it <u>shall</u> be made, in order to obtain 'the inappreciable advantages of Self Government,' Should that period not be anticipated by 'Seeking elsewhere a remedy' for their alleged grievances."

"For these reasons, and for frequent invasions of their rights and privileges by the Assembly and other Constituted authorities, your Memorialists do not hesitate to assert that Machinations are in progress dangerous to that Connexion so happily existing and to those Rights and Privileges which as Britons and the descendants of Britons they are resolved to preserve against all attempts, from whatever quarter proceeding, at the Sacrifice of their lives.

"Ill would it become Your Memorialists, and faithless would they be to that Spirit which distinguishes the British Nation and which equally characterizes the population of British descent spread over North America, did they not denounce as dangerous and criminal that delusion which prompts the fragment of a foreign race inhabiting a small section of the Continent to attempt to erect a distinct power professing a Policy and principles hostile to the Spirit and institutions which predominate over that immense Territory.

"Your Memorialists would further beg leave to state, that the British Rifle Corps is composed of men banded together to promote good purposes and incapable of stating any but their real intentions, that they shall always be found prompt at the Call of their King and Country, eager to defend British institutions, and resolved to protect their Rights and privileges as the dearest legacy of their Fathers." (Colonial Office Records. Q Series MG11, vol. 226-1, Pp. 70-73)

We might note that Dr. Arnoldi Jr., practising since 1789, was an expert witness in the 1838 trials at St. Denis. (Document sent by the lieutenant-governor to the Marquis of Normandy on May 6, 1839.)

There is reason to believe that he is the Montreal apothecary A.-- whom John Lambert described in his chapter on Three Rivers society in his Travels in Lower Canada. (London, 1810)

Gerald Hart notes that his uncle, A.P. Hart, a leading lawyer in Montreal, defended many other loyalists in the Rebellion trials.

He was one of the defence attorneys, together with John Boston, Henry Driscoll and Robert Armour, in the case reported fully in a 55-page booklet by Thomas Handcook, The Trial of Isaac Jones and James Jones for the Alleged Murder of Louis Marcoux, at the Bar of the Court of the King's Bench for the District of Montreal on March 4-6, 1835. (Montreal, Morning Courier, 1835; noted by R.A. Davies. Printed Jewish Canadiana, 1685-1900)

Marcoux, a merchant, was slain at Sorel. "He was an ardent partisan of the patriots Dr. Nelson and Papineau, who were working for the relief of the numerous evils that our fathers complain of with so much justice. The long and unhappy efforts which the Canadians had made until then, had produced but little change in the administration of public affairs; it became evident that the anger of the people would soon become enflamed. The fanatical element which were the masters, were a handful of English, who did every thing they wished and the Canadians, encircled by the military caste (Sorel was a Garrison town) who were patriots were less pronounced than elsewhere. (A. Couillard and Desprès. Histoire de Sorel, de ses origines à nos jours. Montreal. Imprimerie des sourds-muets, 1926. P. 193; reprinted in Quebec by Editions Beaudry & Frappier)

The Jones brothers were accused of murdering Marcoux during a bitter election campaign.

Their brother Robert Jones had represented the Sorel riding (William Henry) in the Assembly from 1814-24. At the time of the Marcoux murder he was a member of the Legislative Council of the colony, having been appointed three years earlier. He was to retain the position until the dissolution of the legislature and then sat in the Assembly of the united colony of the Canadas from 1841 to 1844. Later he served on the colony's Legislative Council from 1849 to 1850.

Dr. Wilfred Nelson was one of the witnesses.

The accused were found not guilty by the jury.

Dr. Nelson asked the parish priest for a high mass for the repose of the soul of the victim, but the Grand Vicaire set a condition; that no speeches be made on the occasion, and that the inscription on the tombstone consist only of "words of peace".

The bishop forbade the proposed wordings, "Marcoux died in the defence of the rights of his native land" or "Marcoux has died. Long live the patrie."

Such a memorial was nevertheless erected in his memory at St. Denis.

Gerald Hart, who was bitterly hostile to the French Canadian cause and to their church, notes that "a stone monument with disloyal remarks engraved, was erected by the French-Canadians but the British Soldiers soon destroyed it in the cemetery. The Abbé comments on this destruction of the monument: 'It will remain, nevertheless, to remind us of the time, already distant when our ancestors had to contest-fight (lutter) to prevent our prerogatives, our rights, to founder (sombré) under the blows of the oligarchy which were becoming more and more tyrannical.'"

On which Gerald Hart, uncle to A.P. Hart, comments,

"So much for the French-Canadian loyalty, evidenced by this writer, recounted with the heart-felt commendation, approval and sympathy of the Abbé! Patriots indeed! It was the French-Canadian misnomer for 'rebels", as is shown by this priest, an Abbé."

Many years later, in 1915, pieces of this monument were found and the memorial was restored.

L.M. Lande's Canadian Historical Documents and Manuscripts lists a dossier in the case of The Queen vs. B. Holmes for the offence of forgery in which Hart acted for the defence in 1839. (B.477)

In 1842 A.P. Hart presented a petition, on behalf of Henry William Harris, to the Legislative Council of the Province of Canada sitting at Kingston, praying that certain forms and services may be dispensed with in respect of the proceedings now pending before the Legislative Council upon the subject of the Petition of the said Henry William Harris, praying to be divorced from his wife, Eliza Lock Walker, and another praying to be heard at the bar of the house in support of the petition.

Gerald Hart records in his notes A.P. Hart's connection with the celebrated, or notorious, case of Maria Monk.

The historian of the Quebec Act and of other Canadian annals cites Gen. Riedesel's Letters as translated by W.L. Stone in 1867 (P. 68).

"My invariable society in Three Rivers was the grand vicar, and his so-called cousin. As such, at least, she had been introduced to me by my husband. She was good humored and conversed pleasantly. He had the same qualities, and was a man of intellect. I learned afterward, that every one of these gentlemen had the same kind of cousins residing with them, who acted as their housekeepers, but who, in order to avoid scandal, were forced almost every year to absent themselves for a little while, on account of a certain cause."

Gerald Hart adds, "So there seems to be some foundation for Maria Monk's narrative, published, many years later, which is not allowed to be sold, by the hierarchy, now-a-days. My Uncle Aaron Philip Hart, a distinguished lawyer of Montreal, defended her from false charges and priestly persecutions."

Sense of Family

Gerald Hart continues the narrative,

"Even at this late date, the truly loyal French-Canadian can prove his loyalty by an Act of Parliament ordering the entire effacement of all those rebels' names and monuments wherever existent, but will they do it? No!!

"All these various papers published by Christie, bear the names mentioned in the first instance as the Committee appointed to represent the 800 assembled citizens of Montreal, and among them appears Aaron P. Hart , uncle to the present writer, and lineal descendant of Commissary General Aaron Hart who settled in Montreal and Three Rivers in 1760. He was the oldest brother of Theodore Hart, both sons of Benjamin. It is most gratifying to the writer, as doubly related to Aaron Philip Hart, my mother's brother and my father's first-cousin, to find the prominent part he took in opposing this organized band of French Canadian Anglo-phobe rebels, who owed everything to England they then possessed in property, livelihood and social standing but unwilling, then as now, to admit it; base ingratitude; while he, himself, and his ultra loyal ancestors, never received an honor or distinction of any kind or emolument from the British Government for all they had done to maintain the connection between Canada and Great Britain after the Conquest, which was not by any means inconsiderable.

"It may be mentioned here, that the writer has among the family heir-looms, one which intimates that a member of the family endeavored to organize a regiment, called 'Hart's Militia Regiment' believed to be, to repel the American Invasion of 1775 or for use, during the War of 1812, as several members of the family served as Officers in that war.

"He has a miniature of Aaron Philip as an Officer in uniform. This heir-loom will be among those to be given to the McCord Museum at David's request to me.

"The loyalty to England of the Harts throughout their long career in Canada has never been questioned or impeached, and they were a very numerous family and some very wealthy, and not one a pensioner on the Government or City. Had they been traitors or rebels or even accused of a crime and Papists, they

would probably have been rewarded with a knighthood, baronetcy, Peerage or Lordship legally, such as have been conferred upon French Canadians, and a statue, public park or street named in their honor, to wit -- the Pacific scandal and extortion. They were not allowed to be politicians, probably from fear that their transcendent abilities and high integrity would have displaced several of the eminent semi-educated French Canadian politicians, or compelled them to act loyally to their best friends, the Britishers!! As Lawyers (there were four of them in the family) they had no peers, in oratory,capability and linguistic ability, speaking French, Latin and their mother tongue equally fluently (Judge Monk and others who knew them told me so), and the only thing that kept them back was they were not French Canadian barnyard habitants, and Papists. Christie truly says, Vol. III, p.34, 'In no country are the people remarkable for gratitude to their benefactors, and perhaps less so in Canada, than in any.' The bulk of the habitants are innately rapacious, and no salary satisfies them, if they see the way to vote themselves more; and these salaries are nine-tenths English earned. Shame on the English voters who permit it.

"It is not to be surprised at that Theller in his memoirs, another arch-rebel, should devote a page of abuse upon Aaron P. Hart, while being conducted to the Citadel Prison at Quebec from Montreal, when he saw that Hart was the leader of the Montreal Boys, who were conveying him there for High Treason with other of his associate rebels as prisoners; and it is possible, as he was an Americanized Irish subject, another Papist, Anglo-maniac and discontented race of people, without cause; he might have been drawn and quartered, a punishment that was still on the British Statutes, and had been actually carried out in Quebec in 1797, had he not managed to escape, from the Citadel Prison, (probably with some French Canadian connivance) and got to the Harbour of Refuge, the U.S.A."

This is probably the basis for Clarence de Sola writing of his raising a company of loyalist militia. (Jewish Encyclopaedia, repeated by Cecil Roth in his presidential address, October 27, 1940 before the Jewish Historical Society of England as recorded in its Transactions, 1939-45, vol. 15, P. 21. "The Jews in the Defence of Britain, Thirteenth to Nineteenth Centuries.") Louis Rosenberg lists A.P. Hart as serving with the regular forces during the Rebellion of 1837.

At this point we are favoured with Gerald E. Hart's views on the continuity of Judaism, of some interest all their own:

"Theller's chief grievance against Aaron Hart seemingly was his being a Jew, which he yelled at him repeatedly. This did not prevent Aaron, however, in after years, following Cupid's dart, marrying an estimable Christian lady, Miss Henderson of Brockville, without either renouncing their faith. Several of his brothers followed his example: Henry, Doctor Frederick, Theodore, and raised large families, living today, all good Christians (some Catholics among them) who, inheriting the Hart family blood, are loyal, honest subjects of Great Britain, even though it may be contrary to the advice and faith of their Priest or Minister and Church. (That is one thing the Jews may be proud of -- they do not believe in conversions, hence do not waste money on Missionaries or encourage them. They honor all faiths alike, and do not believe any one is better than his neighbour's.) Dr. Frederick, the second or third graduate in medicine from McGill University: He settled in Louisiana and became allied to Jefferson Davis' family through marriage. They visited our family here during their honey-moon trip."

Philippe Constant has sought to clarify the confusion which arose from identifying Capt. Frederick Hart who commanded a company of Chasseurs de St.-Philippe-de-la-Prairie in 1812 with the Jewish Hart family. (Bien public, March 30, 1939) This identification was made by Gerard Malchelosse (Ibid., Feb. 23, 1939). According to Constant the militia officer was descended from the Hessian family of Herdt who married a St.-Philippe resident.

Remarkably, Capt. Frederick Hart appears in the records of 1838 as attesting to the tense conditions in St.-Philippe. One of these affidavits was sworn before Benjamin Hart, J.P. (Archives nationales du Québec. Documents on 1837-38. nos. 86, 1789)

Fernand Ouellet refers to F. Hart as Justice of the Peace. (Le Bas Canada, 1791-1840. Ottawa, Editions de l'Université d'Ottawa, 1976. P. 468)

Elsewhere Gerald Hart notes that "a nephew of Moses Hart, Alexander Hart, married Bouchette's daughter Louise, who in a second marriage became Lady Shea of New Foundland." (McCord Museum, McGill University)

A Legal Opinion

This is the background of Aaron Philip Hart, the son of Benjamin Hart, whom the father and his very close friend Moses Judah Hays consulted for legal advice before accepting the commissions of the peace offered them in keeping with the new law of 1832.

Young Hart opined from his offices at St. Gabriel St. in Montreal on May 31, 1833, as follows:

"In answer to your questions submitted to me, respecting the possibility of persons professing the Jewish faith, taking the oath of abjuration in accepting office as justices of the peace in this Province, under existing laws in force in this Province, I beg leave to state, that having duly considered the question, I am clearly of opinion, --

"1st. That the 1 Will.4, c.57, of the Provincial Legislature, has not in any way provided for the omission of the words 'upon the true faith of a Christian,' in the taking of the oath of abjuration by Jews in this Province.

"2nd. That the Statute of the 10 Geo.1, c.4, which permits Jews taking the oath of abjuration, to omit the words 'upon the true faith of a Christian' has expired, and is no longer in force.

"3rd. That the statute 13 Geo. 2, commonly called the Colonial Naturalization Act, refers, in the omission of the above words, only in cases of naturalization.

"4th. That under existing circumstances, I am decidely convinced that persons professing the Jewish faith cannot take the oath of abjuration necessary to be taken by justices of the peace, until some Legislative enactment be made, providing for the omission, in the abjuration oath of the words in question."(MG. 11, Q. 209-1, P.73)

This opinion was passed on to the Governor who sent it on to the Colonial Secretary in London.

The not very eloquent testimony of Moses Judah Hayes before the Kimber Commission on Feb. 25, 1834 conveys some of the atmosphere of the historic incident.

"Moses Judah Hayes is my name; I am one of the proprietors of the Water works in Montreal, and I am of the Jewish belief.

"Were you informed that there existed an Act of the 1st Will. IV. Cap. 57, permitting Jews to accept Office, previous to your being lately called to the Commission of the Peace?

"I knew that the Provincial Legislature had passed an Act granting such privileges to the Jews in this Province.

"Did you receive any Official Circular from Government to qualify yourself for the Commission of the Peace; when did you receive the same, and what answer did you give?

"I received a Circular dated the 24th April 1833, from the Civil Secretary, Mr. Craig, to that effect, and I answered him, that after having read the 3d, 8th and 19th sections of the Act for the qualification of Justices of the Peace, I found there that I could qualify myself, and I answered to Mr. Secretary Craig, that I would accept the Office.

"Subsequently to that answer did you enter into any correspondence with any of the Law Officers of the Crown on the subject?

"None; I never communicated with any of the Law Officers of the Crown on the subject; I only took the opinion of Aaron Philip Hart, Esquire, Attorney, which opinion Mr. Benjamin Hart and myself forwarded to His Excellency, requesting that should the difficulty therein mentioned, viz: the words 'upon the true faith of a Christian' (the same being incompatible with the tenure of our creed) be left out, that we should then qualify ourselves.

"Were you at that time, solicited by any one to write to the Governor and especially about taking the oath of abjuration, and that if you did you might be prosecuted in such a case?

"Mr. Benjamin Hart was the person that came to me and gave me to understand that we could not qualify, and that his son was of that opinion.

"You said that you never consulted any Law Officers of the Crown about the difficulties you met with respecting taking the oaths; do you know if Mr. Benjamin Hart has consulted any of them, or has entered into any correspondence with any of them, respecting the said difficulties?

"I do not know anything about Mr. Hart, he only gave me the opinion of his son which I signed and forwarded.

"Has Mr. A.P. Hart entertained always the same opinion?

"That I cannot assure in the first instance, for I am not very intimate with him; but since he has given his opinion, he still persists in the same, and he has given me a second opinion which confirms the first, by referring especially to the expiration of the Act 10th Geo. I. Cap. 4, which provides for the omission of the words 'upon the true faith of a Christian' in taking the oath of Office."

B.Hart and M.J. Hays Withdraw

Hays and Benjamin Hart wrote Lieut.-Col. Craig, Civil Secretary at Quebec on June 3, 1833,

"Since we had the honor of signifying to you, for the information of His Excellency the Governor-in-Chief, our willingness to qualify ourselves as Justices of the Peace for the District of Montreal in accepance of the Office tendered to us by His Excellency, we have in Consequence of doubt arising in our minds respecting the possibility of our taking the Oaths of Office as required by Law, Consulted a Professional Gentleman, whose opinion we beg to Enclose with this, and who does not think that we can possibly omit the words 'upon the true faith of a Christian,' which form part of the abjuration Oath which is obliged to be taken by Justices of the Peace, the Provincial Legislature not having gone far Enough in the Act 1 Wm. 4, c. 57 which was passed 'to declare persons professing the Jewish Religion Entitled to all the Rights and Privileges of the other Subjects of His Majesty in this Province,' nor having provided for the omission of the above words in the taking of the abjuration Oath.

"We must therefore beg of you to signify to His Excellency the Governor-in-Chief that, finding it impossible under the present Existing Circumstances that we can as Jews take the Oath of Abjuration in accepting the Office of Justice of the Peace, we must request respectfully that we may not be included in the New Commission; At the same time we must tender to His Lordship our sincere acknowledgments of the honor intended us, and we pray that His Excellency will be pleased to bring the question in some way before the Imperial Parliament, so that this only remaining disqualification of the Jews in this Province may be removed, and that no objection to their hereafter accepting Offices, or places of Trust in this Province may remain."
(Colonial Office Records, Q series, MG.11, vol 209, Pp. 70-71)

Passing it to London

Colonel Craig replied to these Montreal Jewish citizens on June 10th, that "the Governor shall not fail to make early communication to the Secretary of State on the subject, in the hope that legislative measures may be adopted for the removal of the difficulty."

The Colonial secretary acknowledged this resignation on June 10, 1833,

"Having submitted to His Excellency the Governor in Chief, your letter of the 3d. instant, declining for the reasons therein mentioned, the office of Justice of the Peace, I am directed by His Lordship to inform you, that he much regrets the existence of any impediment to your acceptance of the office in question, from which he anticipated much advantage to the public; and that he shall not fail to make an early communication to the Secretary of State on the subject, in the hope that Legislative measures may be adopted for the removal of the difficulty which now stands in the way of your appointment."

And indeed he kept his word, for on the 18th of June Lord Aylmer wrote to the Rt. Hon. E.G. Stanley from Sorel,

"Being about to issue a new Commission of the Peace for the Province of Lower Canada in which the names of several Gentlemen not in the Existing Commission will be introduced, I proposed to two Individuals, Mess. Benjamin Hart and I.M. Hays, Residents of the City of Montreal, and professing the Jewish Religion, to become Magistrates, an Office which they are now competent to fill by Law.

"It appears, however, that the omission of the Words, 'Upon the true faith of a Christian' in the Oath which must be tendered to them on entering upon office, not having been provided for, this circumstance operated as a ban to their Acceptance of my proposal, which they have accordingly declined.

"I have now the honour of transmitting herewith a Copy of the joint letter addressed by these Gentlemen to my Civil Secretary to that effect, and of the legal opinion of the Professional Gentleman who, it appears, had been Consulted by them upon the Subject; and I take leave to submit to your consideration the Expediency of affording relief in this particular to these parties, and others who may be under similar Circumstances in the Bill in favour of Persons professing the Jewish Religion, which I understood to be now in progress through the Imperial Parliament, more especially as any Enactment on this Subject in this Country, would not (as I am informed) avail." (Colonial Office Records, Q series, MG 11, vol. 209-11, Pp. 68-69)

Undercutting the effectiveness of Lower Canada's act, the governor also sent to London the opinion of A.P. Hart.

The reference in this letter to the effort being then made in the Imperial parliament in favour of Jews is of some interest.

Lord Aylmer was seeking a connection between the colonial law with the emancipatory move in London.

But official advice from the imperial authorities soon annulled any such connection. London responded,

"In answer to your lordship's despatch No. 65, of the 16th of June last, representing that members of the Jewish Religion are prevented from becoming magistrates in Lower Canada, because the oath which it would be requisite for them to take in entering on the office contains the words "on the true faith of a Christian", I have the honor to acquaint you that I am not aware of any reason why this difficulty should not be removed by an enactment of the Provincial Legislature. If it be supposed necessary that such a Law should be laid before both Houses of Parliament under the 46th section of the 31 George 3rd, I cannot think the opinion well founded.

"But even if an act for the relief of Jewish Magistrates should be within the meaning of that part of the British Statute, this would form no objection to the origination of the measure in the Province.

"I must therefore recommend that application should be made to the Legislature for the remedy of the inconvenience which your Lordship has brought under my notice, unless that course be opposed by some insuperable obstacle which has not occurred to me and which, in that case, your Lordship will have the goodness to report."

London is Wary

James Stephens wrote on Aug. 24, 1833 from Downing St. to R.W. Hay,

"In obedience to the commands of Mr. Secretary Stanley signified to me by yourself, I have perused and considered a despatch from the Governor of Lower Canada, dated 18th June last. No. 65 respecting the obstacles which must prevent members of the Jewish Religion from taking the oath of abjuration in Lower Canada and, with reference to the Governor's observations that no Enactment on this subject by the Provincial Legislature would avail, I am to report to you 'whether I am aware of the circumstances which limits the power of the Colonial Legislature on this point.'

"I have therefore to report that I am not aware of any circumstances which would justify the Governor's statement, that no Enactment on the subject in Lower Canada would avail. I can only conjecture that he refers to the necessity, whether real or supposed of communicating any such law to both Houses of Parliament, under the Statute 31, George IV, cap. 31, S.46. But even if an act for the relief of Jewish Magistrates should be within the meaning of that part of the British Statute, which is at least a very doubtful question -- the only effect would be to suspend the confirmation of it until Parliament had permitted the prescribed time to elapse, without addressing His Majesty against that confirmation.

"It is however scarcely credible that the temper of the British Parliament should be so misunderstood in Lower Canada, as to have induced the opinion that any opposition to such an Enactment, would originate with them. I therefore conclude that the Governor's allusion must have been made to some difficulty of a different nature; and that my inability to interpret his meaning arises from my own ignorance. I confess however that I cannot find the interpretation unless it be that which I have already suggested."

The letter was received at Sorel on Oct. 23, 1833, and the Civil Secretary was instructed to "communicate officially with the Attorney General as to the course which it may be necessary to adopt in communicating this subject to the Legislature."

This London opinion may have been exactly what Benjamin Hart and Hays had wanted: that remedial action be taken to make the normalization of Jewish rights complete, possibly by action in the imperial parliament. We have other indications that Benjamin Hart was London-oriented in his political thinking, rather than Quebec-centered. Indeed, the colonial governor supported this approach.

In point of historic fact, relief for Benjamin Hart came, when it did come, from London, as we shall see.

It is surprising that Benjamin Hart gave the opposition so little trouble at this stage of the story. It can only be that he was following another tactic, aimed at securing clearer regularizations of the legal status of the Jews in the colony from the imperial authorities in London -- which did in fact come, as B.G. Sack narrates in his History of the Jews in Canada.

An unlikely consideration that may explain Hart's withdrawal was his age. In a later document he referred to his having been born sixty-two years earlier and not being inclined to enter the contest of office. But the historic record of his vigorous, civic and congregational activities five years later renders this explanation untenable.

Arthur Wellington Hart, son of Benjamin, later had occasion to record, in a letter to Colonial Secretary Sir John Russell dated Feb. 25, 1840 that "the administration of Lord Gosford (1835-38 - D.R.) elevated Benjamin Hart to the magisterial bench together with Mr. Hays, another Israelite. These two gentlemen being the only official appointments ever made by the British Government in the British North American Colonies!" (PAC, Ser. Q. vol. 277, Pt. 2, P. 203)

The Trois-Rivières Brothers

In the meantime another candidate for office in Lower Canada was dealing with the problem, in his own manner.

Future developments put the onus for permitting the problem to arise upon the Montreal men and gave the Trois-Rivières candidate credit for his procedure.

Trois-Rivières was different from Montreal in many senses. Their politics were different, as was their social attitude.

Three sons of Ezekiel Hart played a central role in our history: Aaron Ezekiel Hart (1803-57), Adolphus Mordecai Hart (1814-79) and, centrally, Samuel Becancour Hart, the eldest.

His testimony before the Kimber Committee tells much of the story,

"Are you born in the country, what is your profession, and what religion do you profess?

"I am born in the country, I am a Merchant, and I profess the Jewish faith.

"Were you called to the Commission of the Peace, when, and under whose administration?

"I was called to the Commission of the Peace towards the end of the administration of Sir James Kempt: I received from him a Circular inquiring whether I would qualify for admission; I answered that I should do so.

"I was however afterwards informed that the Attorney General James Stuart, had given his opinion to the Executive, that I could not be appointed, accordingly I received a Letter from Sir James Kempt, informing me that he could not admit me to the Commission of the Peace, but that he would write to England on the subject; shortly after, he left the Province.

"On Lord Aylmer's arrival I received information that as soon as the Act 1. Will. IV, Cap. 57, which had just passed the two Branches of the Legislature, should receive the Royal Assent, he would then appoint me to the Commission of the Peace.

"Accordingly last summer I received a Circular asking me if I would qualify: I answered in the affirmative, and my name was inserted in the List of the Justices of the Peace for the District of Three Rivers."

The circular referred to is dated July 29, 1833 and reads,

"Having received a new Commission of the Peace for this District, and finding your name inserted therein for the first time since the passing of the Act 10 and 11, George IV. cap. 2, for the qualification of Justices of the Peace, it becomes my duty to enquire,whether it is your intention to qualify and act as such Justice, that I may have it in my power immediately to comply with the provision of the Provincial Statute of the 34th George III. cap. 6, section 34.

"Your answer is necessary, and will oblige,

"Sir, Your very obedient humble Servant,

" (Signed) David Chisholme, Clerk of the Peace."

S. B. Hart was the only candidate for this office to receive such a letter, a fact which did not escape him. Mr. Chisholme probably expected a refusal similar to that sent by the Montreal Jewish candidate for the office.

He must have been disappointed, for he received no answer at all.

Samuel Becancour Hart was not surprised to receive notification of his appointment to the Commission of the Peace in the summer of 1833.

But as soon as he received his notification he heard of trouble. In June Benjamin Hart wrote him from Montreal informing him of his own withdrawal and advising S.B. Hart to write a similar letter to the Governor.

Strongly Resisting Pressure

When the Attorney General received the resignation of Benjamin Hart and Mr. Hays, he intended to omit the name of Samuel Becancour Hart as a matter of course from the Commission. But this came to the attention of his brother, Aaron Ezekiel Hart. It was the Attorney General himself who had "informed me that, as all doubts had been removed by the Act, he had thought fit to name" the Jewish men from Montreal. Now it was his intention "to leave my brother's name out...upon which I remonstrated with him, and wrote him a note on the subject. I told him it would be a very hard case to render my brother ineligible because another of the same persuasion differed from him on the subject; and if his name was suffered to be left out of the list, that I would expose the whole proceedings in the public prints. Some time after, the Commission of the Peace was issued and his name appeared therein. I should have felt much annoyed had my Brother's name been left out of the Commission, because His Excellency, the present Governor in Chief, informed me immediately after he assumed the Government, that as soon as the Legislature had passed an Act admitting Jews to office, that he would immediately cause my brother's name to be inserted in the list."

As Samuel Becancour Hart continued his testimony before the Kimber Committee,

"Did you afterwards meet with any difficulty in qualifying or in taking the oaths required in such cases?

"Yes, after the List of the Justices of the Peace had been published, the Law allowing six months to qualify, before the expiration of one month after the date of my appointment, I received a Letter from Mr. Chisholme, Clerk of the Peace at Three Rivers, intimating that I should qualify immediately. I then enquired of the other magistrates recently appointed like myself, whether they had received a similar injunction, and was informed by them that I was the only person that had been so required to qualify in so short a time, and contrary to the Letter of the Law."

Mr. Chisholme's letter of Aug. 3, 1833;

"Having been favoured with no answer to my official letter to you of the 29th ultimo, and delivered to you personally in the forenoon of the same day, inquiring if it was your intention to qualify and act as a Justice of the Peace in and for this District, I have it in command from His Excellency the Governor in Chief, to request that you will immediately furnish me with a categorical answer to my inquiry.

"Having received leave of absence from His Excellency to go to Upper Canada on important business, I have to beg that your answer may be sent to my house, or left at the Post Office, at or before nine of the clock this evening."

To which S.B. Hart responded on the same day,

"I have the honor to acknowledge the receipt of your letter, bearing date the 29th ultimo, and beg to state that I purpose seizing the earliest opportunity to conform to the provisions contained in the Provincial Statute 10th and 11th Geo. IV. cap. 2, to which you have considered it necessary to refer."

At half past seven in the evening, Chisholme repeated his demand,

"I have this moment been favoured with your letter of this date, acknowledging the receipt of mine of the 29th ultimo, without any reference to my letter of this day; and beg leave in reply to state to you, that as you have not thought it proper to answer those parts of my communication to you which intimate the necessity of being informed whether it is your intention to act and qualify in all other respects as a Justice of the Peace, as well as merely to qualify yourself so far as regards property, I cannot take it upon myself to acknowledge your letter of this day, as a full and explicit answer, either to mine of the 29th ultimo, or to that of this day.

"I have therefore to intimate to you, that I shall wait for whatever communication you may deem it necessary to make to me upon this subject, till one o'clock in the morning, in order to enable me to communicate the whole of our correspondence to His Excellency the Governor in Chief, before I depart for Upper Canada."

Hart held fast, and within minutes wrote Chisholme a letter he could read at leisure in Lower Canada.

"Aug. 3, 1833.

"Your last letter came duly to hand.

"I hardly deem it necessary to state to you, the particular line of conduct which I intend to pursue, in relation to my qualifying as a Justice of the Peace for this District, further than stated in my former reply; suffice at present to state my surprize at the precipitous call which you say you have in command from His Excellency the Governor in Chief, to demand my categorical answer to your question, a line of conduct before unheard of with respect to any other Justice of the Peace, and which I shall not fail to communicate to His Excellency at my earliest convenience, together with a Copy of your communication to me on the subject."

S.B. Hart continued to narrate these incidents before the Kimber Committee,

"I should observe that in this copy of my correspondence at that time, there is also a Letter addressed to Colonel Craig, Civil Secretary, for the purpose of being submitted to His Excellency the Governor in Chief, and another to the Attorney General, Charles Richard Ogden, Esquire, to which I received no answer.

"After this Correspondence, I made application to the Sheriff Isaac Gouverneur Ogden, and Mr. Craigie Holmes Coffin, Commissioners per dedimus potestatem for administering the oaths, required. They refused to administer them to me, stating that they were not in possession of the Parchment on which the oaths are written. I did not wish to apply to Mr. Chisholme the other Commissioner as aforesaid, because I had heard it mentioned that he would insist upon me taking the oath of abjuration, without omitting the words 'upon the true faith of a Christian.'

"I afterwards applied to Joseph Badeaux, Esquire, one of the said Commissioners, and took before him the oaths prescribed by Law on this occasion, but in the manner expressed by an Act of the Imperial Parliament, 13th Geo. II. Cap. 7, now in force in as far as regards the exemption of persons of the Jewish persuasion from pronouncing the words 'upon the true faith of a Christian,' whenever they are required to take an oath."

Mr. Chisholme must have been long absent in Upper Canada, for he was not aware of what was happening in Lower Canada. On Aug. 26, 1833 he wrote to Hart,

"In reference to the correspondence which lately took place between us on the subject of your qualifying and acting as a Justice of the Peace in this District, I am commanded by His Excellency the Governor in Chief, to inform you, that the Public service requires that you should, without delay, conform to the provisions of the Law, regarding your recent appointment as a Magistrate; and that if you shall fail to qualify and take all the oaths required, so as to enable you to enter upon the performance of the duties of that office within one week after thus my requiring you so to do, you will be considered as having declined the acceptance of it."

To which Hart responded on the 28th,

"In your capacity of Clerk of the Peace for this District, I now inform you that I have, agreeable to Law, taken and subscribed all the oaths required of me as Justice of the Peace for this District, and have otherwise qualified as such."

Whenever it was that Joseph Badeaux swore him into office, the certificate to that effect gives Aug. 28, 1833 as the date. It reads,

"I hereby certify that Samuel B. Hart, Esquire, did on Wednesday, the 28th day of August, in the year 1833, take and subscribe the several oaths required by Law of him to be taken and received, as a Justice of the Peace in and for the District of Three Rivers, and did do so conformably to the Laws of the said Province of Lower Canada.

"Dated at Three Rivers, this 2d day of Sept. 1833.

"(Signed) Joseph Badeaux. Commis. per Dedim. potestatem."

Hart's were not letters to make Mr. Chisholme happy. So he wrote Hart on Aug. 29, 1833,

"I was yesterday favored with your letter of that date, intimating to me in my capacity of Clerk of the Peace, that you had, agreeable to Law, taken and subscribed all the oaths required of you as a Justice of the Peace for this District; which intimation is all that I desire in the capacity you allude to, and which I have filed of record in my office.

"But having been otherwise honoured with the commands of His Excellency the Governor in Chief to ascertain your views and intentions with respect to your qualifying and acting as a Magistrate, I deem it proper to inform you, that I cannot consider my duties fulfilled, or the Commission with which I have been entrusted as at all accomplished, without being now, or within the week mentioned in my letter to you of the 26th instant, furnished, for the information and satisfaction of His Lordship, with a certificate of your having taken and subscribed all the oaths required by Law, under the hand of the Officer who may have administered those oaths to you."

But Chisholme's happiness was not Hart's primary consideration as he responded the next day, Aug. 30, 1833,

"Yours of yesterday I duly received, and cannot help expressing my surprise and indignation, at being called upon by you to ascertain my views and intentions with respect to my qualifying and acting as a Magistrate, after my notice to you of the 28th instant, informing you of my having taken the necessary oaths. I have therefore, Sir, only to add, that I shall act in future as circumstances may require, without deeming it necessary to submit to your consideration my views or intentions on that subject: Mr. Badeaux having refused me a certificate asked for in the latter part of your letter, deprives me sending you the same."

It is difficult a century and a half later to tell whether Chisholme was the happier to hear from Hart on Sept. 2, 1833,

"My letter, bearing date the 30th ultimo, informed you of the circumstance of Mr. Badeaux having refused compliance with the request I made to him to procure a certificate of his having administered to me the several oaths comformably to the Laws of this Province; but having since obtained from him the desired document, I herewith enclose it to you, in order that it may be, without any necessary delay, transmitted to His Excellency the Governor in Chief."

Chisholme promised to transmit the certificate the same day,

"I have to acknowledge the receipt of your letter of this date, with a certificate under the hand of Mr. Badeaux, of your having taken and subscribed the several oaths as required by Law, and which I shall transmit to Quebec by tomorrow's Post, for the information of His Excellency the Governor in Chief."

Protesting Oppression

On October 13 he addressed a very strong letter to Mr. C.R. Ogden accusing him of associating "your name as Attorney General with those frequent acts of oppression and injustice which have been committed towards me, while I have been endeavouring to counteract the intention and to avert the designs of persons whose constant aim it has been to exclude me from the enjoyment of my rights as a British subject; I must confess I was somewhat grieved when it came to my knowledge that you had written a letter to Mr. Benjamin Hart and Mr. Moses Hays, intimating to them, the wish of His Excellency the Governor in Chief, that they should decline accepting the situation of Magistrates after you had advised the Government to include them in the Commission of the Peace; and that in accordance with your views, those Gentlemen were requested by you to have an opinion formed, which cannot but be considered as adverse to their own interest and prejudicial to the rights of Members of the Jewish persuasion residing in this country."

He closed, "With every desire that you should avail yourself of an opportunity that is now afforded you to justify your conduct upon that occasion, which I conceive was not generous."

Mr. Hart received no reply.

To continue with this testimony of S.B. Hart,

"On the 21st October following, at the Quarter Sessions, I took my seat on the Bench, where I met most of the Justices of the Peace of the District.

"They insisted that I should take the Chair, and Mr. Chisholme then handed the said Parchment to each of the magistrates in order that they might take the oaths, without offering it to me, knowing that I had taken the same before Mr. Badeaux.

"On the following day, on the 22d of the same month, I resumed my seat, and was surprised to see Judge Vallières take his seat, and the oaths also; but when he came to the oath of abjuration, he said in the presence of a great number of By-standers in the Court, 'I see no objection in taking this oath, but I declare before all, that this oath is not according to Law.'

"A few days after this circumstance, I was informed by a friend of mine, that the Sheriff called upon Judge Vallières prior to the 21st October, to enquire of him what other obstacle in his opinion existed to prevent me from taking my seat, and that the Judge gave for answer that there existed no obstacle whatever, and that I had a right to take my seat.

"After this I was also informed that the present Attorney General had recommended to His Excellency the Governor in Chief to appoint to the Commission of the Peace, Messrs. Benjamin Hart and Moses J. Hayes for the District of Montreal, that the Governor had written to them to qualify, of which I was informed by a Letter from Mr. Benjamin Hart himself; -- and afterwards I learned through another channel that Mr. Ogden had written to Messrs. Benjamin Hart and Moses J. Hayes, that they should not accept, because they could not take the oath without pronouncing the words, 'upon the true faith of a Christian;' and that Mr. Ogden had also written to Mr. O'Sullivan, the present Solicitor General, to induce these Gentlemen not to accept their appointments for the reasons just given.

"Since that time I found no difficulty whatever. I should add, that about the same time when Mr. Benjamin Hart and Mr. Moses J. Hayes had refused to accept the Commission of the Peace, I received a Letter from Mr. Benjamin Hart, advising me also to refuse, and to write a similar Letter to the Governor. My answer was, that I refused this method of proceeding, being persuaded that the Law was in my favor."

Victory Affirmed

Samuel Becancour Hart had won his case for practical purposes. He had been named Justice of the Peace, he had taken the oath in a manner acceptable to a Jew, and he sat in office. His relatives in Montreal who had resigned the offer pending clarification of the law had withdrawn from the honours of office unnecessarily.

But he was deeply resentful of what had happened, and his feelings emerged freely in correspondence and in testimony.

A.J. Arnold's reading of the political situation in Trois-Rivières -- and in the Lower Canadian Jewish community -- probably has considerable merit:

"Benjamin Hart, one of two Jews named as magistrates in Montreal on the eve of the rebellion, had been unable to take this appointment previously because of the oath problem. He was undoubtedly grateful for the royal intervention from London by which he finally won his post, and he demonstrated his loyalty by his official actions against the rebels during the outbreaks in Montreal.

"What is not fully known is the role played by Samuel Becancour Hart, who became a magistrate in Trois-Rivières three years earlier because of the more liberal attitude of the French Canadian oath commissioner, Joseph Badeaux.

"There is evidence to show that S.B. Hart found himself allied with the French members of the magistrates' court. Before the first session of the court opened in October 1833, the sheriff, I.G. Ogden, had apparently canvassed some of the other members for their opinions as to whether any obstacle existed to prevent Hart from taking his seat. The only firm opinion reported is that of Judge Vallières, who said Hart had a right to take his seat. At the opening session all the magistrates were asked to take the oath except Hart who had already done so. The oath still included the words, 'on the true faith of a Christian'. When it was Judge Vallières' turn he said: 'I see no objection in taking this oath, but I declare before all, that this oath is not according to law.'

"This was clearly a public affirmation by the French member of the right of individuals to take the oath according to their own conscience...

"In February, 1834, when Samuel B. Hart was called before a special committee of the Assembly, he submitted a letter he had written to the Attorney General C.R. Ogden. In this letter Hart charged that A.G. Ogden was involved in 'those frequent acts of oppression and injustice which have been committed towards me, while I have been endeavoring to counteract the intention and to avert the designs of persons whose constant aim it has been to exclude me from the enjoyment of my rights as a British subject...'

"The Kimber Committee found in favor of Samuel Hart's course of action at Trois-Rivières, but this did not help the cause of the Montreal Jews for whom nothing was done until the eve of the rebellion in the summer of 1837.

"Samuel Hart was supported in his position before the Kimber Committee by other members of his family in Trois-Rivières. This lends greater credence to accounts of their activities in sympathy with the patriotes during this same period." ("In 1837, Quebe Jews were Split as to Allegiance," in Canadian Jewish News, May 20, 1977)

This coheres with B.G. Sack's report in his History of the Jews in Canada (Montreal, Harvest House, Pp. 123-24),

"At a revolutionary meeting held in Three Rivers on April 20, 1834, Moses Hart, Ezekiel Hart's brother, and Henry Judah, an advocate in that city, arose to deliver fiery, revolutionary speeches. Both condemned the regime in Quebec for its bureaucratic methods and its abuse of power. Coming as a distinct shock to the entire audience, their words demonstrated how closely they were allied in sentiment with the revolutionary movement. This was at a time when the entire French Canadian intelligentsia was indoctrinated with the democratic slogans proclaimed by Papineau and his friends. Strongly idealistic, they dreamed many dreams."

Benjamin Sulte confirms this political situation,

"Ezekiel Hart's son, Adolph Mordecai Hart, a prominent journalist and advocate in Three Rivers, appeared before the courts on many occasions in 1837 to defend arrested rebels. During one such trial he was himself sentenced to an hour's imprisonment and fined five louis for contempt of court. It was a generally accepted fact that only lawyers who sympathized with the rebels could be persuaded to represent them before the courts, and only in this light could the Jewish advocate's conduct be viewed." (Pages d'histoire du Canada, 1891. P. 430; and in his Mélanges historiques, vol. 19, Pp. 54-55, cited by Sack)

Brother Adolphus Mordecai

At this time Attorney General Ogden had in his office as law clerk the youngest brother of Samuel Becancour Hart, Adolphus Mordecai, which must have strained relations very much. (Canadian Jewish Archives, new series, no. 20, Pp. 140, 152-80, 198-209, 212, 224)

A letter survives from another brother, Aaron Ezekiel in which he informs their uncle Moses at Three Rivers that "Adolphus had to leave Ogden's office because he learned nothing there and I got (him) into Aylwin's. The latter has the principal practice at the Bar, and is decidedly the cleverest fellow.

"Adolphus is alone there, and Aylwin is so much pleased with him that from what he says he will take him into partnership. He refuses to take any other clerk.

"Since the affair there is coolness between Ogden and me. I was always against Adolphus going to Ogden.

"I would advise you sending a strong memorial to the governor against Ogden's conduct", in a civil case in which Moses Hart was involved.

Mordecai Adolphus Hart was also hard on A.P. Hart. He testified before the Kimber committee.

"Do you know of any difficulty that has arisen since the passing of this Act, to put the same into operation; state on what occasion, and everything that has come to your personal knowledge?

"No doubts prevailed as to the insufficiency of that Act to allow persons of the Jewish faith to accept of Office in this Province, until the nomination of Mr. Benjamin Hart and Mr. Moses J. Hayes in the Commission of the Peace. I was given to understand that those Gentlemen upon receiving a circular from the Government requesting their consent to their being included in the Commission of the Peace, referred the question to the consideration of Mr. Aaron Philip Hart, an Advocate who had practised at the Montreal Bar for the space of two years, and that the result of his investigation into the Laws of the country applicable to such a novel case as that of a Jew being nominated to the magistracy, was opposed to his own interest, he being of that persuasion.

"Have you any knowledge that the Law Officers of the Crown have been consulted with regard to the difficulties which presented themselves, relative to the said Act?—Having served part of my Law Clerkship in the Attorney General's Office, I would not consider myself at liberty to divulge any circumstance that may have occurred therein. But I can state that since my departure from that Office, it has come to my personal knowledge that the Attorney General had written a letter to Mr. Benjamin Hart and Moses Hayes, advising them to decline acceding to the request of Government, by reason of the impossibility of their taking the oath of abjuration with the words, 'upon the true faith of a Christian;' and to exonerate me from all suspicion of my having derived this information while in the Attorney General's Office, I moreover state that it was told me by Mr. Benjamin Hart, who said that he would shew me the Letter if it had been then in his possession, and which Letter, but a few days before my arrival in Montreal, he had given to Mr. O'Sullivan who is I believe also a Law Officer of the Crown."

Brother Aaron Ezekiel

A.E. Hart had particular reason to resent the entire exclusionist move.

He may have been the first Jew in Canada to be admitted to the practice of law. His membership in the Society for the Encouragement of Arts and Science in Canada, dated June 1827, lists him as advocate. He served with the Quebec militia and had been promoted to captain by 1831. Twenty-five years later he was a major. He habitually attended the Montreal synagogue and subscribed £2.10.0 annually in 1844 and 1845 for the support of a Reader and Shochet and the maintenance of the synagogue in Montreal. The first subscription places him at Trois-Rivières, and the second in Quebec. In these contributions he was joined by A.E. Hart and Moses Hart. (Canadian Jewish Archives, new series no. 16, P. 122; no. 18, Pp. 409-16; no. 20, Pp. 149-52, 181, 184, 199; no. 24, P. 26)

The archives of the American Jewish Historical Society also preserve papers from A.E. Hart's legal study in which he acted as attorney for A.M. Hart in 1851 and in 1857. (Box 1, A.E. Hart file)

Aaron Ezekiel Hart, (1803-57) son of Ezekiel Hart, in his testimony before the Kimber Committee, responded to the question,

"Do you think it would be necessary to amend the Act 1st Will. IV. Cap. 57, and what amendments would you recommend to do away with all doubts on this head?"

"I do not conceive it necessary to amend the Act 1st. Will. IV. Cap. 57, for the following reasons, which I humbly submit to the Committee in writing:

"In the first place it must be observed, that His Majesty's Subjects professing the Jewish Religion, were born to all the rights, franchises, privileges and immunities of His Majesty's other Subjects residing in this Province, except so far as positive enactments of Law should have excepted them from the enjoyment of any of those rights, franchises, privileges and immunities, or should regulate or define the enjoyment of them.

"Admitting this to be the case, which no one can pretend to deny, and which the highest legal authority will permit me to justify, I will proceed to establish this position, that there is not one positive enactment which excludes Jews residing in this Country from the enjoyment of their rights, or which in any manner affects their claim to a full participation with their Christian fellow subjects in all the privileges consequent upon their duty of allegiance as natural born subjects of His Majesty. By the 10th Geo. I. Cap. 4, it is enacted that the words 'upon the true faith of a Christian,' should be omitted whenever a person professing the Jewish Religion presents himself to take the oath of abjuration.

"It may be said that this Law was suffered to expire; altho' I have not been furnished with any evidence of the truth of that observation, I am willing to grant that it has, and that within the Kingdom of Great Britain and Ireland no person of the Jewish Religion is in the full enjoyment of his rights, however much may be doubted the legality of that exclusion in consequence of the forumula attached to the oath of abjuration.

"Again, the question then arises, what is the signification of that formula, and for what purpose was it established? With respect to its signification, it must be borne in mind that that oath was introduced at a time when there was not a Jew in the Kingdom, when they were beneath political notice, and when they were hardly recognized in other more liberal Countries of Europe, as a separate class, or a distinct order of the People. It is apparent from these circumstances, that it was not intended for them.

"What other signification to be attached to those concluding words of the oath of abjuration must be obtained from the events of the times, when dissensions were so prevalent among the people, and which were fomented partly by the introduction of strange religious doctrines, subversive of the tenets of Christianity, and partly from the disposition of the people to reinstate the exiled Stuart family upon the Throne.

"From the first of these two causes sprang the necessity of making some enactment which would distinguish one good Christian from another, who was utterly regardless of that religion, and who neglected and despised its precepts. For this latter class of persons the verification, with which the oath of abjuration concludes, was solely and exclusively intended.

"In the next place, with respect to the purpose for which it was established (so evident from the allusion I have already made to the disturbed state of the Kingdom) it is generally admitted that the object which Legislators had in view to establish such a distinction, was to have preserved the necessity of taking the oaths on the Gospels by those persons who were aspiring to office.

"Thus, it appears that at all events the purpose for which that verification had been established was never attended to by persons of the Jewish faith residing in this Province, knowing as all do, that people of that persuasion have in several instances been called upon to perform the duties of Grand Jurors and have in the presence of the most eminent Advocates of this Province, taken all oaths, that may have been administered to them on the Pentateuch or five books of Moses.

"Having sufficiently answered the questions which have arisen from the insertion of the words 'upon the true faith of a Christian' in the abjuration oath, I will advance further proofs of the position so clearly maintainable, that there is not one legal enactment which excepts Jews from holding office in this Country.

"It is well known that subsequently to the time of passing the Act 10th Geo. I. Chap. 4, no direct provision has been enacted regarding the Jews, except the Act passed in the middle of the last century, 13th Geo. II. Cap. 7; this Act has never been repealed, nor has it expired; it is that part of the Law of the Country applicable to the present question, which has been so much misunderstood. And when I advance the assertion that it has been improperly construed, and incorrectly comprehended, I attribute not any blame to the Law Officers of the Crown who it would appear have never been consulted by the Executive, and who have not bestowed any attention upon the subject.

"To return to the question, by whom has that Statute been misconstrued? By a young man who has scarcely been admitted but two years to the practice of the Law, and who is far from being celebrated for the consistency of his opinions, or for the solidity of his judgment, he having been of a diametrically opposite opinion but a short time ago. That young Gentleman being induced to believe, that the title given to the Statute 13th Geo. II. Cap. 7, 'An Act for the naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's Colonies in America,' was indicative of the provisions it contained, addressed to His Excellency the Governor in Chief, telling him that it referred solely to naturalization, whilst, had he read the concluding clause of that Statute, he would have immediately perceived his error. The third sections of that Law runs thus, 'Whereas

the following words are contained in the latter part of the abjuration oath, videlicet, "upon the true faith of a Christian;" and whereas the People professing the Jewish Religion may thereby be prevented from receiving the benefit of this Act: Be it further enacted by the authority aforesaid, that whenever persons professing the Jewish Religion, shall present themselves to take the said oath of abjuration, the said words "upon the true faith of a Christian," shall be omitted out of the said oath, in administering the same to such person, and the taking and subscribing the said oath by such person professing the Jewish Religion without the words aforesaid, and the other oaths appointed by the said Act in like manner as Jews were permitted to take the oath of abjuration by an Act made in the 10th year of the Reign of His late Majesty's King George the First, shall be deemed a sufficient taking of the said oaths, in order to entitle such persons to the benefit of being naturalized by virtue of this Act.'

"To prove that this Statute was not intended solely for naturalization as advanced by Mr. Aaron Philip Hart, I refer to the sixth or concluding section of that Act, by which it would appear that it required a separate clause to enact, that within the Kingdom of Great Britain and Ireland, Persons who in the Colonies had availed themselves of the provisions of that Statute were incapable of taking, having or enjoying an Office.

"Thus, if it required a distinct provision to say that they should not be admissible to Office within the Kingdom of Great Britain, surely the naturalization conferred upon them by that Statute enabled them to qualify for the acceptance of Office in any of the Colonies of America.

"Thus I have succeeded in establishing that the verification 'upon the true faith of a Christian' was never intended for the Jews, and that by a mere collateral and fortuitous legislation they have been excluded from the enjoyment of their rights.

"I think I have been equally successful in proving that the Act of the 13th Geo. II. Cap. 7, has been improperly construed, and that under the authority of that Act any person professing the Jewish religion can hold Office after a residence of seven years in this country.

"It will be observed that I have not alluded to the Provincial Statute 1st Will. IV. Chap. 57. It was unnecessary for me to do so in maintaining the position that His Majesty's subjects professing the Jewish religion were born to all the rights and franchises of His Majesty's other subjects, except so far as positive enactments of Law should have excepted them from the enjoyment of any of those rights and franchises, and that there is not one positive enactment extant to preclude them from the acceptance of Office in this country, I think sufficiently ascertained."

BACK TO THE ASSEMBLY

The question having been raised in law it did not die quickly.

On Feb. 8, 1834 the Journals of the House of Assembly report:

"Lieutenant Colonel Craig, Civil Secretary to His Excellency the Governor in Chief, was admitted within the Bar and delivered to Mr. Speaker five Messages from His Excellency the Governor in Chief, signed by His Excellency.

"And then he withdrew.

"And the said Messages were read by Mr. Speaker, all the Members of the House being uncovered; and are as followeth:

"Aylmer, Governor in Chief.

"The Governor in Chief informs the House of Assembly, that availing himself of the earliest opportunity of the provisions of an Act of this Province 1st. Will.IV. Cap.57, intituled, 'An Act to declare persons professing the Jewish Religion entitled to all the rights and privileges of the other Subjects of His Majesty in this Province,' caused to be intimated to two Gentlemen of that profession, residing at Montreal, his intention of introducing their names into the Commission of the Peace then about to be issued. The Governor in Chief having received for answer that they would willingly avail themselves of the proposal, but that an obstacle presented itself to their assuming the Office in consequence of the Oath required to be taken by the Justices of the Peace concluding with the versification, 'upon the true faith of a Christian;' the Governor in Chief therefore calls the attention of the House to the subject with the view to make the necessary amendment in the Oath required to be taken, that he may be enabled to confirm to a deserving class of His Majesty's Subjects in this Province, the full enjoyment of the rights extended to them by the Provincial Statute in question."

So, on Feb. 10, it was "Resolved, That the Message of His Excellency the Governor in Chief, of the eighth instant, relating to an Act of the 1st Will. IV. cap. 57, intituled 'An Act to declare persons professing the Jewish Religion entitled to all the rights and privileges of the other subjects of His Majesty in this Province,' be referred to a Committee of five Members, to report thereon with all convenient speed, with power to send for persons, papers and records.

"Ordered, That Mr. Kimber, Mr. Duval, Mr. Besserer, Mr. Quesnel and Mr. Bureau do compose the said Committee."

Committee at Work

Apparently this committee of inquiry found it necessary to inquire very formally, of the Governor in Chief himself, and through the medium of an Address, as to whether he had requested the opinions of the law officers of the crown on the matter.

The same Journals report on Feb. 14, 1834 at four in the afternoon to be precise,

"Mr. Kimber, accompanied by the other Messengers, reported to the House that their Address of Tuesday last, to His Excellency the Governor in Chief, praying that he will be pleased to inform this House whether, in consequence of the obstacles he has met with to the insertion in the Commission of the Peace of the names of certain persons professing the Jewish Religion, whom he wished to include in the same, he has required the opinions of the Law Officers of the Crown as to the nature of those obstacles to such insertion which had reference to the capacity of the said persons to hold civil offices on a footing of equality with their fellow subjects of other Religious persuasions, and that, if such opinions have been given, he will be pleased to cause the proper Officer to lay before this House, copies thereof, and also of all other representations made to His Excellency on the subject of the objections made to the existing Law, and of the amendments which it is proposed to make in it, in order to ensure to persons professing the Jewish Religion, the free exercise of all the Rights and Privileges enjoyed by the rest of His Majesty's Subjects in this Province, had been presented to His Excellency; and that he had been pleased to give the following answer:

"Gentlemen: I desire you will inform the House of Assembly in answer to their Address, that the Law Officers of the Crown have not been called upon for an opinion, nor has any been stated by them, in regard to the obstacles, which have prevented the insertion in the Commission of the Peace of the names of certain individuals professing the Jewish Religion, referred to in my Message of the 8th instant. Those obstacles were brought under my notice by the

parties themselves; and were founded on an opinion, of which they communicated to me a Copy, of a Professional Gentleman whom they had consulted upon the subject; a Copy of that opinion, of the Letter by which it was accompanied, and of the Answer to my Civil Secretary, shall be communicated to the House of Assembly as soon as possible. I desire you will further inform the House that upon the receipt of the Communication to which I have just alluded, I lost no time in making the Secretary of State for the Colonial Department acquainted with the difficulty which had arisen regarding the Oath to be administered to persons professing the Jewsish Religion, and that it was in pursuance of the Instructions received in answer to that reference, that the subject of it has been brought under the notice of the Legislature by my Message of the 8th instant.

"Ordered, That the said Answer be referred to the Special Committee to whom was referred the Message of His Excellency the Governor in Chief of the 8th instant, relating to an Act of the 1st Will. IV. cap.57, intituled 'An Act to declare persons professing the Jewish Religion entitled to all the Rights and Privileges of the other Subjects of His Majesty in this Province.'"

Later in the afternoon,

"The House being informed that Lieutenant Colonel Craig, Civil Secretary to His Excellency the Governor in Chief was at the door, he was called in; and at the Bar delivered Copies of Correspondence respecting the appointment of Benjamin Hart and Moses J. Hayes, Esquires, as Justices of the Peace, prepared in conformity to the Answer of His Excellency to the Address of this House of the 11th instant.

"For the said Correspondence, see Nos. 15, 16 and 17 of the Appendix to the Report of the Special Committee to whom was referred the Message of His Excellency the Governor in Chief, of the 8th February, 1834, relating to the Act 1st Will. IV. Cap. 57, intituled, 'An Act to declare persons professing the Jewish Religion, entitled to all the Rights and Privileges of the other Subjects of His Majesty in this Province.' (Appendix G.g.)

"Ordered, That the said Correspondence be referred to the Special Committee to whom was referred the Message of His Excellency the Governor in Chief of the 8th instant, relating to an Act of the 1st Will. IV. Cap. 57, intituled, 'An Act to declare persons professing the Jewish Religion entitled to all the Rights and Privileges of the other Subjects of His Majesty in this Province.'"

The chairman of the Special Committee was Dr. René Joseph Kimber who represented Three Rivers in the Assembly from Dec. 5, 1832 to March 27, 1838.

Dr. Kimber was a friend of the small Jewish community of Trois-Rivières as is evidenced by the situation at the time of the 1832 elections for the assembly seat in Trois-Rivières. The party lines appeared clear. M. De Niverville, a government man on an official salary of £125 per annum, was running against Dr. Kimber. We read in La Minerve (Dec. 10, 1832, citation from Le Canadien):

"You will also note that it was the family of Mr. Hart, aided by the principal Canadiens, who convoked a meeting at which it was unanimously resolved that,

"'Considering the recent proceedings of the government of Lower Canada, it would be incompatible with their interests to elect a supporter of the government, and that Dr. Kimber be invited to stand as candidate.'"

Later he was to sit in the Assembly of the United Canadas for the county of Champlain from Apr. 8, 1841 until his elevation to the legislative council in Sept. 1843 where he sat until he died on Dec. 22 that year.

He was succeeded in this assembly seat by his son-in-law, Henry Judah (Dec. 22, 1843 to Sept. 23, 1844)

COMMITTEE REPORT

The committee proceeded rapidly.

R.J. Kimber presided over its sessions on Feb. 15, 17, 18, 20 and 25, 1834 which heard all the parties and received the correspondence in the case.

Within three days the matter was before the Assembly.

On Feb. 28, "Mr. Kimber, from the Special Committee to whom was referred the Message of His Excellency the Governor in Chief, of the eighth instant, relating to an Act of the 1st Will.IV. Cap. 57, intituled, 'An Act to declare persons professing the Jewish Religion entitled to all the Rights and Privileges of the other Subjects of His Majesty in this Province,' and other references, presented to the House the Report of the said Committee, which was again read at the Clerk's Table."

The Committee reported that the law was complete and clear, and no additional legislative enactments were necessary. As far as the pesky clause in the oath of abjuration, "on the true faith of a Christian," in the case of a Jew, "it must be taken by him leaving out those words which, if used by him, would deprive the oath of its sanctions and make of it a mere mockery."

The Committee addressed itself directly to the basic issues in question and dealt first with the question of oaths:

"By the Common Law of England, a lawful oath is a solemn affirmation made by one who believes in the existence of God, and in a future state of rewards and punishments, of the truth of a fact, or a solemn promise to do or abstain from some act, -- administered by competent authority, -- the party making the same calling upon God to take notice of what he says, and invoking his vengeance, or renouncing his favor, if what he says be false, or what he promises be not performed. The forms of oaths, like other religious ceremonies, have been always various; and, by the Common Law of England, the religious ceremonies required by different religions, even Pagan or Heathen religions, have not only been permitted, but required, as being in accordance with religious toleration, and in furtherance of truth, the great end sought by this high form of sanction.

"The oath to be taken by Justices of the Peace in Lower Canada, must be required either by the Criminal Law of England, as introduced by the Statute of the Imperial Parliament, 14 Geo. III. cap. 83, or by some Statute either of the Imperial Parliament or of the Provincial Legislature, requiring this form of qualification.

"Generally speaking, the qualifications of Justices of the Peace, as settled by the various English Statutes, are not applicable to the condition of the Province, nor have they ever obtained therein: and although the general body of the Criminal Law of England was introduced into this Province by the beforementioned Statute of the 14 Geo.III., yet those provisions thereof which, from their nature and object, have no just application to the Colony cannot be considered as forming part of the Criminal Law of this country.

"The particular qualification required by the British Statute, of the oath of abjuration, may perhaps be found as little applicable to the Colony at the time of the passing of the 14 Geo.III. as the other qualifications required by the same laws as to landed property, &c. confessedly are.

"The argument as stated against the right of Jews to hold the office of Justice of the Peace has been stated as follows: -- By the Law of England, every Justice must, within six calendar months, take the oaths of allegiance, abjuration, &c. as other persons qualifying for office. Upon the introduction of the Criminal Law of England into this Province, the Laws respecting the qualifications of Justices in England came to be in force; and it is thence inferred that every Justice, upon his appointment in this country, must take and subscribe the oaths of allegiance, supremacy and abjuration, the latter of which is required to be taken 'upon the true faith of a Christian.'

"This brings us to the consideration of the British Statutes relating to Jews, and their holding office in the Colonies.

"By the Statute 13th Geo. II. cap. 7., for naturalizing such Foreign Protestants, and others therein mentioned, as were settled, or should settle, in any of His Majesty's Colonies in America, Foreigners living seven years in any of His Majesty's Colonies, or taking and subscribing the oaths, and making, repeating, and subscribing the declaration therein referred to, 'shall be adjudged and taken to be His Majesty's natural born subjects of this Kingdom, to all intents, constructions and purposes, as if they and every of them had been or were born within this Kingdom.' The third

section after reciting that, 'Whereas the following words are contained in the latter part of the oath of abjuration, videlicet: "upon the true faith of a Christian;" and whereas the people professing the Jewish Religion may thereby be prevented from receiving the benefit of this Act;' enacts, that whenever any person professing the Jewish Religion shall present himself to take the oath of abjuration in pursuance of this Act, the said words, 'upon the true faith of a Christian,' shall be omitted out of the said oath in administering the same to such person, and the taking and subscribing the said oath by such person professing the Jewish Religion, without the words aforesaid, and the other oaths appointed by the said Act, in like manner as Jews, were permitted to take the oath of abjuration by the 10th Geo. III. cap. 4, sec. 18, shall be deemed a sufficient taking of the said oaths, in order to entitle such person to the benefit of being naturalized by virtue of this Act.'

"Under this Statute, Jews, as well naturalized as natural born, could hold office within the Colonies. That Statute indeed seems to be based upon the ground that natural born Jews might hold such office; and its object seems to have been to confer on naturalized Jews within the Colonies, the same privileges in every respect as were held by their natural born brethren therein.

"It is not to be believed that the Parliament intended, under any circumstances, to give to the naturalized foreigners, under this Statute, rights which were denied to natural born subjects of the King.

"One great object of policy which appears to have been contemplated by that Statute, was to fill the Colonies as rapidly as possible with men and capital, not Roman Catholics: a policy produced by the peculiar temper of the times, and by the spirit of intolerance which then obtained both amongst Catholics and Protestants.

"It would have seemed that the words of this Statute, as just given, were too clear to admit of any doubt as to the right of natural born Jews to hold offices in the Colonies.

"Still, the difficulty which has since been made here was then also made. It was said that as the Jew cannot use the last words of the oath of abjuration, 'upon the true faith of a Christian', he cannot take that oath; and that although the words of the just recited Statute are general, yet inasmuch as they do not specially authorize the appointment of Jews to office within the Colony, the Statute received a limitation in this particular.

"But let it be observed, that whenever the words of a Statute are general, they must be construed generally; ubi lex non distinguit nec nos distinguere debemus. That the words 'upon the true faith of a Christian' constitute no part of the promise, to receive its religious sanction by the taking of the oath of abjuration. That by the Common Law, as stated above, the particular religious form of oath must be regulated by the particular religious belief of the party taking it, as well upon the principle of a just toleration, as for the purpose of obtaining the highest possible religious sanction from the particular person who takes the oath, to guarantee its accomplishment.

"To remove the above doubts, slender as appears to have been their foundation, the British Statute 13 Geo. III. cap. 25, was passed, whereby it was declared and enacted, 'That all and every person and persons, that have become, or shall become His Majesty's natural born subjects, by force or virtue of the said Acts or either of them, (13 Geo. II. and 2 Geo. III. cap. 25,) are and shall be deemed to be capable of taking and holding any office or place of trust, either Civil or Military, and of taking and holding any grant of lands, tenements and hereditaments from the Crown, to himself or to any other or others in trust for him or them, as well under the Great Seal of Great Britain, as otherwise, (other than and except offices and places and grants of lands, tenements, and hereditaments, within the Kingdoms of Great Britain and Ireland,) any law or Act of Parliament to the contrary notwithstanding.'

"The word 'declare' used in this Statute, is decisive of the question, and upon the highest authority. The Act quoad, this is a declaratory Act, by competent authority; for cujus est condere ejus est interpretari. We have then in this declaration of the British Parliament, a direct authority in support of the general position that the words 'upon the true faith of a Christian,' in the oath of abjuration, had not in law the effect of disqualifying a person who could not use those words, and who was otherwise qualified to hold office in the Colonies.

"It has been said upon good authority, that perhaps it might be wished that the oath of abjuration were made more short and plain, there being in it several hard words, which probably many who take it do not well understand; and there being an Act of Parliament therein referred to, which perhaps not one in fifty who take it have consulted. However this may be, it may be stated as a fact, that from the Cession of the Country in 1763, down to this time, Justices of the Peace, being of the Roman Catholic Religion, have not been required to take this oath; and so far as the obligation of taking this oath is concerned, they stand upon the same footing as their Protestant brethren.

"This brings us to the consideration of the Provincial Statute 10 and 11 Geo. IV. cap. 2, relating to the qualification of Justices of the Peace, which contains no provisions which can prevent a person professing the Jewish Religion from qualifying as a Justice of the Peace.

"Notwithstanding that it would seem from what is said above, that Jews have the same right to hold office in the Colonies as any of their fellow subjects, doubts continued to be entertained or expressed upon this head, and the Provincial Statute 1 Will. IV, cap. 57, intituled, 'An Act to declare persons professing Jewish Religion entitled, to all the rights and privileges of the other subjects of His Majesty in this Province,' was passed, whereby it was declared and enacted, 'that all persons professing the Jewish Religion, being natural born British subjects inhabiting and residing in this Province, are entitled and shall be deemed, adjudged, and taken to be entitled to the full rights and privileges of the other subjects of His Majesty, His Heirs and Successors, to all intents, constructions, and purposes whatsoever, and capable of taking, having, or enjoying any office or place of trust whatsoever, within this Province.'

"Express as the words of this Statute are, it has been held by some, that a Jew cannot hold the office of a Justice of the Peace, because he cannot use the concluding term of the oath of abjuration, that is, that the Statute is merely inoperative.

"When a power is given by the law, all those things are given which are incident to such power, and without which the power could not be executed. So too, where two Statutes in pari materia, contain provisions which appear to be inconsistent, they shall be construed in such way as that the provisions of both may, if possible, be carried into effect; and in all instances, magis ut res valeat quam ut pereat.

"What is the just inference from these principles, looking at this Statute by itself? It is that if the oath of abjuration be necessary to be taken by the Jew to enable him to have that power which the Statute conferred upon him, it must be taken by him, leaving out those words which, if used by him, would deprive the oath of its sanction, and make of it a mere mockery.

"The sanction of the oath is the religious faith of the man who takes it. If, in using a prescribed form, he declares that the oath is taken under the sanction of a faith which is not his own, there ceases to be any oath whatsoever, and from a too minute and verbal adherence to the Statute, its substance and end is wholly frustrated and annihilated.

"The general principles above laid down, and the interpretation put by Your Committee on the Provincial Statute 1 Will. IV. chap. 57, have not been questioned by any competent authority."

The legislature's committee bluntly concludes:

"Your Committee has ascertained with regret that two persons professing the Jewish faith alone made any objection to the existing law, and put their own interpretation on the Statute, instead of taking the oaths required, as did Mr. Hart, a Jew residing in the town of Three Rivers, who now holds the office of Justice of the Peace.

"Under these circumstances, Your Committee do not deem it fitting or necessary to recommend any additional Legislative enactments on the subject referred to them."

The Report constitutes Appendix G.g. to the Journals of the Assembly in 1834. The Assembly ordered "200 copies of the report printed for the use of the members of this house."

As far as the legislature was concerned, the matter was ended.

Trouble from Jury Foreman

Samuel Bencancour Hart's trouble pursued him, possibly spurred by Mr. Chisholme, Clerk of the Peace in the District of Trois-Rivières.

At the April 1834 term of the Court of General Quarter Sessions of the Peace in the district the Grand Jury formally informed Mr. Chisholme in a Presentment that they had "learned with surprise that the named Samuel Becancour Hart, Esq., of the City of Trois-Rivières, without taking the oath and signing the declaration provided in the Statutes in force in this Province of Lower Canada within the six months immediately after his appointment as Justice of the Peace in the said District of Trois-Rivières, has insisted on sitting as such a Justice of the Peace after the said six months has expired, and at the present sessions, precisely yesterday, in contravention of the said Statutes and so as to bring an informality into the processes of justice as provided by the laws in force in the said Province of Lower Canada.

"Therefore the Grand Jury considers it necessary to make these representations and to present these circumstances to the Court sitting here so that it may bring such remedy as will, in its wisdom, be considered to be deemed necessary." Signed, Apr. 22, 1834, at the Chamber of the Grand Juries by Joseph Craig, foreman.

Mr. Chisholme informed Lieut.-Col. Craig, Civil Secretary to the governor from the Office of the Peace on Apr. 26, 1834 that,

"By the Order of the Court of the General Quarter Sessions of the Peace, and sitting here I have the honour of transmitting to you, for the information of His Excellency the Governour in Chief, a Certified Copy of a Presentment made by the Grand Jury to the Court respecting Samuel B. Hart, Esquire."

S.B.H. -- Citizen

Samuel B. Hart undertook to pay £2.10.0 annually towards the salary of a Reader and Shochet in Montreal during the years 1844-5, together with Moses Hart and Aaron Ezekiel Hart, all of Three Rivers.

We find the same commitment from him the following year where he is described in the synagogue records as of Quebec City.

Business records of S.B. Hart survive in the Library of the American Jewish Historical Society at Waltham, Mass, dated Jan. 1841, at Berthier, which tell of his shipping two bags of furs to I.C. Hart of the Ezekiel Hart and Son firm, with storage instructions.

The same documents record the offer of Mr. Coffey to buy from Hart a lot in Shefford, Melbourne County, in Oct. 1841. (Hart Family Papers, Box 1, Samuel Hart File)

Similarly there is a signed note concerning interest paid to S.B. Hart on Feb. 23, 1852 by the hands of A.E. Hart. (Box 1, A.E. Hart File)

We also find there the invitation sent S.B. Hart for Supper and Cards chez E.M. Hart on Jan. 24, 1846. (Box 2, Gerald Hart Family Papers, Miscellaneous file, no. 13)

Towards the end of his life we find Samuel Becancour Hart involved in one of the bitter litigations that mark the otherwise intimate and intertwined lines of the extended Hart family during the nineteenth century.

In 1851 he was sued by his sister Esther. As part of the documentation of this suit the record has bequeathed us the legal inventory of the goods which the children of Ezekiel Hart inherited from their parents. It is dated two months after the passing of the father. (American Jewish Historical Society Archives, Hart Papers, Box 7, ledger 2)

The passing of Samuel Becancour Hart did not bring him final rest. Half a century after his passing on Jan. 11, 1859 and interment in the Prison St. cemetery at Three Rivers, his body was exhumed and reburied in Montreal in 1909.

Long after his death in 1859 his sister-in-law,Mrs. Phoebe David, the wife of his brother Aaron Ezekiel Hart, alleged in 1876 that S.B. Hart and Adolphus M. Hart are not the male children of Ezekiel and Frances Hart. The dispute involved fraud that may have been committed in regard to Becancour. (American Jewish Historical Society Library, Hart Paper, Box 3)

When the seigneuries of Quebec were extinguished that of Becancour, extending over 5300 arpents, with an appraised value of $9,000, was owned by the heirs of Samuel Becancour Hart. It was bringing a revenue of £40.

For decades after the passing of S.B. Hart the archives, land registries, national records and court proceedings of the province continued to fill with the complexities of the land and seigneurial holdings of the Hart family.

One such dossier, almost a sample at random, concerns the case of Gerald Ephraim Hart and Emile Hart, now of Norfolk, vs. Charles Drouin of Becancour concerning a property and mill in the seigneury sold by S.B. Hart in Sept. 1852 with right of access to the river and of cutting timber necessary for constructing mills and for maintenance.

However, the purchaser was not able to exercise these rights and the extinction of the seigneury rendered the original annual payment unrealistic; so the purchasers refused to make the annual payments and, indeed, petitioned the circuit court for a refund of payments already made during the past 31 years.

As late as 1895 the heirs of Samuel Hart (son of Ezekiel) were part owners of Ile de la Trinity, also known as St. Quentin, Ile aux Cochons and Ile Maillet.

PRIDE OF COMMUNITY

Gerald E. Hart, nephew of Samuel Becancour, was proud of his family's contribution to the emancipation of the Jewish people. He wrote,

"Public Benefits conferred by the Aaron Hart Family of Canada and the United States, unsurpassed by that of any Politician:

"These benefits consist of the obtainance by Ezekiel Hart and his son, Samuel Becancour Hart, after a strenuous fight of some twenty-five years with the hierarchical government and legislature of the Province of Quebec, the complete Civil Rights in Canada for their co-religionists the Jews; years before the same were granted in England, France and other Christian countries. This battle was fought by them at their sole expense and loss of time for which the present generation enjoying the amelioration and honors thus obtained are indebted. Considering that for twenty centuries and more the iron heel of despotism was the doom of the Jews, first by the Romans, and other pagan nations, and then by the Christians, as they rose in influence, and power, this boon, obtained by the Harts, and the abolishing of the ghetto, has no equal in the emancipation of any race of mankind in the world's history. Can the Jews show this Hart family sufficient gratitude and acknowledgment?"

History introduces us to another son of Benjamin Hart who won the notice of such chroniclers as Morris U. Shappes (Documentary History of the Jews in the United States. N.Y., Citadel Press, 1952); Hye Bossin (Stars of David, Toronto -- 1856-1956. Toronto, Canadian Jewish Congress, 1957. P. 10) and the historian of the Holy Blossom Temple Bulletin, Nov. 30, 1976.

Arthur Wellington (Samuel) Hart (1813-91), the second son of Benjamin Hart, is known to us as being in business in Montreal since the early 1830's. Correspondence of this character with his uncle Moses of Three Rivers survives in the Hart collection. (Canadian Jewish Archives, new series no. 19, P. 17; no. 20, P. 264; no. 24, P.8)

A.W. Hart was in York (Toronto) by 1832, accompanied by brothers Henry and Theodore, the first Jews known to settle there. He operated the A.W. Hart & Co. insurance agency and a branch of the family wholesale business there.

On the first page of his The Jews in Toronto, a History to 1937 (Toronto, McClelland & Stewart 1979), H. Speisman notes,

"Continuous Jewish settlement did not begin until 1832 with the arrival of Arthur Wellington Hart. A grandson of Aaron Hart of Three Rivers, and thus a scion of one of the oldest Jewish families in British North America, Hart had probably come to establish a branch of his father's Montreal wholesale mercantile house, because York with a population of about nine thousand by that year, was no longer a frontier village. He also became agent for the Eagle Life Assurance Company of London. Hart obviously possessed some capital when he arrived, for he immediately occupied a two-storey merchant shop on King Street, then the principal commercial thoroughfare of the town.

"Unlike the majority of Toronto's early Jewish settlers, who were Europeans, Hart was born in Montreal. However it was characteristic of at least the pre-1880 Jewish settlement in that he had come via the United States and remained only a few years. In 1836, perhaps dislodged by the political disturbances of the period and certainly by the financial panic, Hart left Toronto, finding his way first to England, then to Scranton, Pennsylvania."

Many years later, in Jan. 1849, he wrote from Newcastle on Tyne to his friend the Hon. Robert Baldwin, now at Montreal, again prime minister of the United Province of Canada, to congratulate him "on once more holding the reins of government with Lafontaine. When I look around and trace the careers of those I knew in Toronto -- Sullivan, King, Frances Hincks and yourself -- who were my principal friends, I feel dull at my status quo position and all the others secured their own fame...Hincks recognized me at once although twelve long years had rolled by and with them endless vicissitudes and changes." (Archives of Metropolitan Toronto Library Board, A49.88)

The Harts were well-versed in the social customs of the day and succeeded in becoming an integral part of the highest social circles inhabited by the Anglican upper-class. Letters to Robert Baldwin, the future governor of the province, recount the Hart brothers' warm friendship with the prominent Baldwin family, and their constant presence at the Baldwin's dinner-table and soirees.

"Most principle, but when I recall the deep interest your good parents, as were good the members of your kind family, have ever felt in the behalf of myself and my brothers." (A.W. Hart, letter to Robert Baldwin, March 28, 1836. The Baldwin Room, Toronto Public Library, Central Branch.)

During the rebellion A.W. Hart served as major with the Loyalists in Lower Canada in 1837-38.

A.W. Hart wrote his Uncle Moses in Three Rivers on Dec. 3, 1840 to invite him to Liverpool for his marriage to Miss Wolff of London. But Malcolm H. Stern in his Americans of Jewish Descent, a Compendium of Genealogy.(Cincinnati, Hebrew Union College Press, 1960) records his marriage to Selma Ezekiel.

He was intensely proud of his family and Jewish traditions and bequeathed the historians of continental Judaism with an important document on the Harts of Canada. It was published by the American Jewish Historical Society in its Publications, no. 27, 1920, Pp.490-93)

B. Hart and M.J. Hays -- J.P.'s

Arthur W. Hart was in Liverpool on business, and had been there two years when he wrote Lord Glenelg on May 29, 1837 "calling attention to the Oath required by law to be taken by persons entering on the Office of Magistrate in Lower Canada, the operation of which Excludes Gentlemen of the Jewish persuasion from that situation." His Lordship replied regretting that the matter rests with the legislature of the colony and that it was beyond his powers to afford relief. (Colonial Office Records. Q series, MG 11, vol. 242-3, P. 827)

His efforts were spectactularly successful. His father and Moses Judah Hays were named to the magistracy in a document signed by Queen Victoria herself, on Aug. 5, 1837.

The issue had been won both in London and in Quebec.

Sack quotes from a further letter from A.W. Hart to his Lordship dated at Liverpool on Dec. 24, 1837 in which he acknowledges that "the first Oct. of our Gracious Queen on issuing the Commission of the Peace...for the District of Montreal, was placing the name of my estimable and worthy Parent on the list and his consequent elevation to the Magisterial Bench. My Lord, the Israelites of the North American and West Indian Colonies are deeply indebted to you for your gratuitous exertions in Endeavouring to Extend Civil and religious liberty, and in granting them immunities and privileges unextended to the Hebrews of this Kingdom." (Sack. P. 113; Colonial Office Records, Pp. 852-54)

The commission in the hands of Benjamin Hart in particular was to play a significant role in the history of the colony within months of issuance.

We might note for biographical purposes that A.W. Hart continues in his letter with a personal matter:

"Having been given to understand that I may be placed as a Native of Montreal in some difficulty from the Circumstance of my holding a Commission of Lieutenant in the 3rd Regiment of the Militia for the Town of Montreal, such Regiment being now on Active Service, I have to request of Your Lordship leave of absence for some months to close those Commercial Arrangements I have been interested in as a resident Merchant of Liverpool for the past 2 years, being told a Law of Lower Canada does exist whereby all absentees must procure from the Government an Official Leave during the Existence of disturbances.

"By the Ensuing Spring I would be enabled to proceed to Canada if my Services are required by Virtue of my Commission. Your Lordship's kind attention to this matter will oblige me.

"The Sources from whom my Information has reached me can be fully depended on and as such I shall give Your Lordship Copious Extracts."

In a letter dated Feb. 25, 1846 to the London Voice of Jacob on the "Civil and Political Influence of the Jews in Canada" printed in the issue of May 8, 1846, Pp. 130-31, A.W. Hart wrote,

"There was a law passed in our provincial legislature a few years ago. It was prepared by the Honorable Henry Black of Quebec, a gentlemen to whom the Jews of Canada are deeply indebted, for his noble and disinterested exertions on their behalf. Himself an ardent admirer of constitutional liberty, and the firm and zealous promoter of religious freedom, he has, by his influence and position in the community, chiefly contributed to place the Jews on a footing of equality with his Christian fellow subjects."

Henry Black served for a year on the Special Council which advised the governor after the suspension of the legislature in 1838. He was named on Apr. 18, 1840 and sat until its dissolution on Feb. 10, 1841. In April of 1841 he was elected to sit for the City of Quebec on the legislative assembly of the United Province of Canada where he served until Sept. 22, 1844. He died in 1873.

The present state of research provides us with no documentary information on his role in the legislation concerning the Jewish community.

To continue with the letter of A.W. Hart,

"Whilst our brethren are writhing under the iron hand of despotism in Northern Europe, and multitudes are leaving the territories of the autocrat, to seek asylum in the land of the enlightened and the free, some hardy adventurer may direct his steps to our hospitable shores, where he will enjoy the fullest measure of religious liberty that is possessed by our fellow subjects in any part of the British dominions. Here, we have toleration in matters of faith guaranteed to us by the laws of the land; we are entitled to hold the highest civil offices in the province, and we

are exempt from those odious restrictions to which our brethren are liable in the metropolitan state. There was a law, passed in our provincial legislature a few years ago intituled An Act, to declare persons, professing the Jewish religion, entitled to all the rights and privileges of the other subjects of His Majesty in this province.

"Previous to the passing of this law, there had been Jews appointed to office in the province, and although the late lamented Ezekiel Hart, Esq. of Three Rivers, was illegally excluded from his seat in the Colonial Legislature, in 1808; perhaps, since that period, no doubt has existed as to their right to the fullest participation of the privileges enjoyed by our Christian brethren.

"I know there are many well believing persons who maintain that our political degeneration, in some of the areas where the Jew may dwell, affords conclusive evidence of the truth of our religion, and the fulfilment of the Prophecies supporting it. True, but as long as the period of our probation endures as long as it pleases Divine Providence to expose us to the trials and vicissitudes we have experienced in many parts of the world, the sincere and orthodox Jew may hail with delight the granting of such boons as those we have received in Canada. -- The free and unfettered exercise of the rites and ceremonies of our religion, require and imperiously demand freedom from all political restraints. We are not willing to endure the persecution of the religious zealots, nor are we desirous of being exposed to the ferocity of His Imperial Majesty, the Czar of the Russias!!"

"I may here observe, that our late governor, Lord Metcalfe, in the spirit of religious toleration inculcated by these passed beneficent legislative provisions, appointed one of our brethren to an office of great political importance in the Province, and has thereby added another claim to our gratitude and respect, for his liberality in choosing persons of our religious persuasion for judical and other offices, whilst administering the government of Jamaica.

"It is pleasing, Sir, to relate on the progress which persons of our holy Faith are making in the great work of regeneration, in this remote part of Her Majesty's dominions; whilst the Jewish population of many parts of Europe are as yet unfree from the trammels of persecution sprung from the bigotry and superstition of the savages, the Jew, in Catholic Canada, may worship the God of his Fathers in peace and security, and may repose in the consciousness that his faith is upheld and protected by the laws of his country."

We find A.W. Hart in New York in business in 1851. He was a director of New York State Telegraph Co. and offered shares in the company to Moses Hart.

At one time he owned the Milwaukee News, before moving to Scranton, Pa., where in 1861 he was the publisher and editor of The Scranton Daily News and Hyde Park Advertiser.

In April, 1861, he helped recruit what became Company H of the Eighth Regiment, Pennsylvania Infantry, which enlisted for a three-month term. Later that year he became a clerk in the Ordnance Division of the War Department. January 29, 1863, he was appointed Clerk First Class in the Internal Revenue Service, after passing an examination for that grade; having already advanced to Clerk Fourth Grade, he nevertheless resigned on April 21, 1869 (to take effect June 30, 1869) because of what he alleged to be political pressure.

In 1872, while living in New York, he was active in a company organized to bring about the settlement in the United States of 40,000 Jews from pogrom-ridden Europe, particularly Roumania. His request that the government provide 250,000 acres on which to establish a colony for this purpose was rejected with the explanation that the law provided for individual homesteading only.

"Hart was for many years a prominent figure in Jewish communal affairs, being connected with the Congregation Shearith Israel," Schappes noted. "He died in Montreal in 1891 at the age of 78."

Thus Lower Canada entered the tight society of enlightened nations whose Jews enjoyed full citizenship, a condition which has since been the occasion of pride.

Although the act today is spent, having been superseded by other, more comprehensive guarantees, it was nevertheless the first of its kind. As such, it became the catalyst for later legislation which was to ensure religious and political emancipation in this country for all its peoples.

There are several fundamental questions about this radical legislation that are as yet unanswered, at this state of Canadian research. Answers will doubtless eventually be given coherent with the reality of the colonies at this period.

One significant element about this law is the relative silence that surrounds it. Contemporary comment is virtually non-existent. It is almost as if the law concerned the building of a country road or the amendment of a private charter. Neither in private nor in public was there any debate, unlike the condition about Ezekiel Hart twenty-five years earlier.

But how could so radical a measure, not clearly based in current developments and not parallelled exactly at this time on the continent or in the empire, pass with not a private or public reference?

Which brings us to the strange silence about Papineau, the strong political figure of this time who is usually credited with the passage of this measure. Yet he, too, is silent on this legislative act, as are his biographers.

Admittedly, Papineau was deeply engaged in the intensive political controversy which was heating up in the colonies, soon to burst into violence and the destruction of the state structures.

It is difficult to place the act of 1832 in the political context of the time, if only because it is illuminated by so little contemporary comment. This unanimity does not explain why a measure seemingly of self-evident justice was not passed earlier or was not delayed for longer.

We can only note that the social philosophy of Lower Canada, 1832 was not that of 1807. Nor was it the philosophy of 1882, that of young Bourassa. The law could not have passed in the days of Tardivel. This year of 1832 is in the relaxed Canadian Voltaire era.

The Roman Catholics were in what Judge Pagnuelo called their natural position as allies of the Jews in the struggle for what they called religious liberty, it was their majority that passed the law.

This virtual unanimity does tell us much about the pervading political atmosphere. It does not describe it; it affirms a consensus that has erased the priority attaching to the established Anglican church which, but three years earlier, had opposed unsuccessfully even the recognition of other Protestant denominations. Apparently, having lost that battle, fatigued, it conceded defeat of its principle of supremacy.

Some twenty years later in 1849 a partisan debate between the Montreal Pilot and Gazette centered on whether it was the Conservatives or the Liberals of the 1830's who accorded full political privilege to Jews. (Canadian Jewish Archives, new series, no. 18, Pp.391-95)

We are forced to resort to speculation of a less provable nature. Fernand Ouellet and André Lefort write of radicalization in Papineau's career after 1828 when American institutions became more generally accepted as a model for Lower Canadian thought and the extension of the power of the franchise to more local institutions and even to the Legislative Council became the objectives and the slogans of daily politics. (Their biography of Denis-Benjamin Viger in the Dictionary of Canadian Biography)

Fernand Ouellet holds that "it was as much out of a desire to gain votes and out of liberalism as out of the will to weaken the 'Anglican establishment,' which Papineau had described as the 'determined ally in the persecution of the Canadians,' that the new chiefs of the party initiated a policy to be consistently followed in favour of the rights of the Church of Scotland, the Methodists and the Jews." (Fernand Ouellet. Le Bas Canada, 1791-1840. Ottawa, Les Editions de l'Université d'Ottawa, 1976. P. 321)

The great and complex figure of Louis-Joseph Papineau dominated the political life of the half-century. Between 1792 and 1838 he was speaker of the assembly for 21 years, the successor of Jean-Antoine Panet, an equal worthy predecessor of the French Canadian nationalism of his own time, who had sat in the chair for 20 years. Only two other Canadians got to sit on that chair: J.-R. Remi Vallières de St.-Réal for two years and Michel de Lotbinière for three.

Papineau had represented, successively, the constituencies of Kent, Montreal West, Surrey and Montreal County in the Legislative Assembly of Lower Canada and sat in its Legislative Council from 1820 to 1823.

The social and personal philosophy of Louis-Joseph Papineau was so complex that he has proved one of the lasting riddles in Canadian history, greatly complicating an understanding of the policies he followed and of the radical events he shaped.

His theories, which were also at the root of European national liberation of the period, harmonized so well with the aspirations of the Canadian leaders such as Rodier, Viger, Bourdages that "they were accepted as pure truth, and we find some of them, among the most conservative in the world, sometimes affect the most disquieting liberalism. It is one of the most curious phases of the psychology of the Patriots to see their integral traditionalism accommodate to the most liberal and libertarian ideas of his day.

"It would be an error to identify the Patriots to European liberalism. Canadian liberalism was only an instrument, or rather a radical argument, to secure a liberation which would permit Canadian traditionalism to develop freely." (Gérard Filteau. Histoire des Patriotes. Montreal, Editions de l'Aurore, 1975. P. 107)

"This Canadian nationalism did not describe itself as exclusive. It simply sought its place under the sun without displacing the minority established in its midst. The Canadians wanted to live and were disposed to let their competitors live. Theirs was not a narrow nationalism; certainly it did not descend into racism. Its ideal was to assure the peace and contentment of all classes of the inhabitants of its country, without distinction of origin or faith, on the solid and durable basis of the political links of a common interest and of a shared confidence in the protection of the motherland," to cite the 4th of the 92 resolutions." (P. 124)

Robert Rumilly describes the opening of the 1831 session, "The House had been convoked for Jan. 27, 1831 but the illness of Lord Aylmer delayed the opening. The members, already assembled at Quebec, came one after another or in groups to receive their orders from Papineau whose room was never empty. The older men renewed their allegiance; the newer members paid their homage and asked for instructions. All spoke of the Speaker as they would later speak of the Chief." (Papineau et son temps. I.217)

In her study of Papineau, Son influence sur la pensée canadienne, Essai de psychologie historique, Mme. Eve Circé-Côté (Montreal, Regnault, 1924. VII, 252 p.) wrote,

"Papineau was the resounding echo of all calls to liberty. He has made all humiliations, all the miseries, all the anguish of our fathers his own, bore them on his robust shoulders, not to expiate them but to avenge them. His genius compounded of love, of power and of will is the honour of our history and of our race. That was the patriotism that he lived...That is why he deserves to have his name inscribed in the calendar of our secular saints. He deserves homage not yet rendered...

"His glory is the heritage of all races. For us he was a saviour. For the English whom he brought back to the ways of justice and of humanity he was providential. The Jews owe him the recognition of their civil rights and the possibility of sitting in parliament. He is great because embraced all time." (Pp. V-VI)

"With a turn of speech Papineau made the honest Assembly, whose Speaker he was, understand that it is necessary to accord civil rights to the Jews and to rid the country of feudalism." (Her "La Genèse de la pensée canadienne," in 1932 Edition souvenir of Jewish Daily Eagle, Pp. 64-65)

It is of some interest to readers of the history of Jews in Canada that Mme. Circé-Côté traces an heir to Papineau's ideals and a successor to his social action in the twentieth century: Godfroy Langlois,who figures strongly in Montreal Jewish political history of the early 1900's. (Papineau. P.240)

As Ouellet put it in his biography of Papineau, in the Dictionary of Canadian Biography, the French Canadian statesman saw the Anglican church as a force which the Catholic church fought while it was defending the rights of the people.

Early as 1826, during the debate on granting the dissident churches the privilege of maintaining registers of civil status, he spoke out in favor of Presbyterians, Methodists and Jews in the name of religious liberty. Clearly he was seeking to undermine the pretensions of the Church of England.

Rosenberg wrote to Naim Kattan on July 16, 1959,

"Quebec was not the first country in the world or the first country in the British Commonwealth to grant full political equality to its Jewish citizens. In fact Quebec was the only province in Canada in which the right of Jews who were British subjects by birth or naturalization was denied in the Legislature.

"Ezekiel Hart was elected a member of the Legislative Assembly of Lower Canada in 1807 by a majority vote in his constituency of Three Rivers. He was refused permission to take his seat on the ground that he was a Jew. He was re-elected in 1809 and was again refused the right to take his seat in the Legislature on May 5, 1809.

"An Act passed by the Parliament of the United Kingdom in 1740 permitted Jews born in the United Kingdom or its colonies or naturalized as British subjects to hold office in the British colonies in North America and absolved them from taking the oath 'on the true faith of a Christian.'

"The colonial office was, therefore, of the opinion that Ezekiel Hart had the right to be elected and take his seat in the Legislature of Lower Canada in 1807 and 1808, but did not wish to interfere with the decision expressed by the majority in the Legislative Assembly of Lower Canada.

"In 1831, the same year as the Act removing the political disabilities of Jews in Quebec was passed, a similar act was passed by the Legislative Assembly in Jamaica, and Alexander Bravo was the first Jew to be elected and to take his seat in the Jamaica Legislative Assembly in 1835.

"In 1849, among the 47 members of the Jamaica Legislative Assembly eight were Jews and the speaker of the Jamaica Legislative Assembly, Dr. C.M. Morales, was a Jew.

"The first colony or province in Canada to elect and seat a Jew in its Legislature was Vancouver Island, which elected Selim Franklin, a member of its Legislative Assembly in January 1860 and re-elected him in 1863. British Columbia was also the first in Canada to elect and seat a Jew, Henry Nathan, in November 1870, as a member of its Legislative Council. Henry Nathan was also elected by acclamation in 1871 as one of British Columbia's two members of Parliament in Ottawa and re-elected him in 1872."

It is interesting to note the comments of a French Canadian historian of 1871. Joseph Tassé wrote in La Revue canadienne (P. 425, "Droits politiques des Juifs au Canada".) to recall Ezekiel Hart:

"This law was confirmed by other legislation since 1832 and Jews in Canada are vested with all the privileges of British subjects, and were able to take advantage of this liberal measure.

"The Jew Hart lived long enough to witness the enactment of this law and to observe how far ideas had progressed in our parliament since the time he was forced to renounce politics. Some of his compatriots have since solicited the vote of electors, and one of them, Mr. Benjamin, has been frequently heard from.

(Samuel Benjamin was elected to the Montreal City Council in 1849 and served several terms. -- Canadian Jewish Archives, new series no. 20, P. 264; B.G. Sack. History of the Jews in Canada. 1965. Pp. 115, 146. No Jew served in the Quebec Assembly until Peter Bercovitch was elected in 1918. -- D.R.)

"But in Canada, as in England, in the U.S. and elsewhere, few of the descendants of the ancient tribe of Levi aspire to political honours. In most cases they succeed in wealth which, failing other aptitudes, is most often the road to achievement. They have preferred the cult of the golden calf and devote themselves to commerce, which has turned some of them into the world's richest capitalists.

"Canada has been far ahead of England in justice and liberality by liberating the Jews politically. In fact, they were still discussing the granting of political rights to Jews at Westminster in 1847, 1850, 1851 and 1857 while our provincial legislature accorded them the full plenitude of these rights in 1832.

"So an English colony, which is often criticized for modelling its laws on imperial legislation, this time offered the motherland an example which it thought well to follow. It was not the first political lesson which the country gave to England, and we believe it will not be the last."

Quebec historian Pierre-George Roy wrote on "L'Emancipation politique des Juifs au Canada" in his Recherches historiques, (Vol. II, 1905, Pp. 89-91), beginning "Ever since the immolation of the Son of God on Golgotha the Jews have been considered as pariahs unworthy of any consideration by nearly all nations."

He continued, after the case of Ezekiel Hart "the Assembly was not bothered by the Jewish question for several years...

"Prejudices having fallen away in regard to Jews, a bill was presented by Mr. Neilson...It was passed by the two chambers without raising virtually any discussion...

"Since 1832 the Jews in Canada then enjoy all the privileges of British subjects.

"We are often treated as backward people. In England there were long discussions about granting political rights to Jews. The doors of parliament were opened to them only in 1858. We are therefore more than a quarter-century ahead of Old England in this case. If we search a little we may find other circumstances where we have taught the motherland a lesson."

The article was reprinted in Action catholique and elsewhere.

Seventy years later Henri Bourassa was pleased to record that "the province of Quebec was the first part of the British Empire to accord to the Jews their rights as citizens. Even at the time when my coreligionists...were denied those rights in England, the French Canadian Catholics in the Province of Quebec passed a law -- and if I may speak personally, I may say that my own grandfather was the author of it -- to give the Jews civil rights in the province of Quebec, before England or any part of the British Empire had done so.

Having established such credentials for fairness to the Jews he proceeded to malign the Jews as being the source of social unrest in Russia; of their using relief funds, raised to help the victims of pogroms, to purchase arms for revolutionists; of conspiring

to murder Christians; of failure to assimilate and of using their citizenship only to enrich themselves "by extorting from the poor people not only their money but the blood of their life, and repeating in fact the historical example of Shylock." (Quoted in Jewish Times, March 23, 1906)

As we shall see, he came to regret this anti-Semitism.

Many years later, Quebec debated the admission of women to the bar. S.W. Jacobs acted for Mrs. Annie Langstaff before the courts in the case. During the debate in the legislature Armand Lavergne recalled, in defense of women's rights, that Quebec was the most liberal of all provinces and was the first to grant Jews their political freedom. In the case before the House, as in other cases, he said Quebec should be behind no other province.

Louis M. Benjamin, Montreal littérateur and journalist, was among the first to emphasize the Franco-Jewish connection in Canada. He had translated Romain Rolland's Jean Christophe into Yiddish (ed. by K. Fornberg, N.Y., Literary Publ. House, 5 volumes, 1918-21) and wrote "Salvation through the Jews, Reflections on Léon Bloy on the Occasion of the Centenary of his Birth," in Carnets Viatoriens (vol. 13, July 1948, Pp. 171-78).

In 1932 he wrote the French editorial in the jubilee edition of the Jewish Daily Eagle,

"It was a French province which made the political emancipation of the Jews of Canada possible, a French province which found it necessary to accord liberty to our race. The centenary of this emancipation is a historic event even for French Canadians.

"Characteristically, in Europe it was France, the ancient motherland of the Canadiens, which first accorded political liberty to the Jews; and in Canada, indeed in the entire British Empire, it was Quebec that showed this fine example of wisdom and of tolerance.

"Only those who themselves love liberty and justice can be generous enough to share it with others.

"Our case is the more significant and illustrates the magnanimity of the Québecois who, a hundred years ago, were seeking certain constitutional rights. It is a remarkable historical fact and French Canadians can legitimately be proud of it. It is one of the finest national character traits, and we take pride in declaring it at this moment.

"It is our hope that Quebec will never regret this act of justice. It is also our hope that this fine example of a hundred years ago, when this province showed its liberalism towards a minority, will inspire all of Canada in its attitude towards Quebec.

"It is regrettable that there are some irresponsible persons who would destroy the work of Papineau and of other French Canadian patriots. They are sowing prejudice and hatred, and seek to implant the political life of this province with a destructive, evil spirit. Fortunately the better elements of the populace will not hear their venomous words.

"The Jews, on the other hand, have done their utmost to strengthen the Canadian spirit and to become useful to this country and to their fellow citizens. They have done their share in various domains, particularly in industry and in commerce. They strive to maintain racial peace and harmony.

"Although the education of their children has been entrusted to English-language Protestants, as a result of circumstances, they have proven their attachment not only to the culture of the English majority of the country but also to the culture of French Canada. A striking example:

"According to the sixth census, there are sixty groups in the country each with its own language. Of these the Jews are the third, after the French Canadians themselves to report French as the language being used side by side with their own mother tongue. In this regard they exceed even the Belgians. In other words, among the 1,500,000 Canadians of other than English and French origin, Jews use French more than any other group in the country.

"The fact is so eloquent that no commentary is necessary. It is a social phenomenon from which we can draw very interesting conclusions.

"The Jews have a saying, 'We forget our enemies but we remember our friends.'

"We shall always remember the beau geste of Quebec."

In the terrible 1930's the anti-Semitic Le Patriote related the enacting of the liberation measure to the position of the church towards the Papineau-stimulated revolt of 1837. The Montreal paper edited by Joseph Ménard accused Papineau of "opening the doors wide for Jews to introduce them into government, despite the formidable opposition of the Canadians who had made life hard for some time for a Jewish member from Trois-Rivières. Came the events of 1837 and the warnings of Mgr. Lortigue. All this brought down on the head of the bishop the anger of Papineau." (Aug. 31, 1933)

It is true, Le Patriote admitted, that at the time no group of Canadians protested or declared that people ought to be treated differently than others because they are Jews. But Ménard explained that at this period no anti-Semitic group had been formed because the Jewish evil had not been established. Eyes had not been opened. The consequences of the act were not yet evident because Jews were but a handful. In fact, the census of 1871 tells of only 1,115 Jews in Canada, .03% of all religious groups. It was the influence of Louis-Joseph Papineau and his radical and liberal ideas that thus won for them religious freedom equal to that enjoyed by Catholics. Papineau diverted public attention in this matter by treating it as an act against the English oligarchy. (May 1935)

Thus in 1932 Joseph Cohen, M.L.A., had occasion to address the provincial assembly in defence of the Jews against the anti-Semitic propaganda wave that was sweeping the province. (D. Rome. Clouds in the Thirties, section 2, Pp. 42-42A)

"In 1832, a hundred years ago, almost to the day, this Legislature put on the statute books -- twenty-five years before this was done in England -- a law granting equal rights to any person professing the Jewish faith. The bill was presented by this immortal patriot, Louis-Joseph Papineau, whose love of the liberty of his own people could not blind him to the point of committing an injustice to others, not even to the humble Jews, at this time numerically unimportant in Quebec. His love of liberty soared above all considerations of the diversity of religions, above secular prejudice, above hackneyed anti-Semitic arguments.

"This Legislature, inspired by his eloquent voice and the purity of his motives, adopted this law which put this beloved province in the front ranks of the enlightened states of the world and established the French Canadian people as a race deserving recognition by future generations for its love of freedom for themselves and for others.

"A hundred years later, in 1932, the Jews of Quebec, the descendants of those mentioned in the statute, appear before the Legislature claiming from the descendants of the illustrious patriot Louis-Joseph Papineau to protect them in their rights and privileges, in the hope and in the conviction that the same pure and elevated motives and the same love of liberty will prevail." (Centennial 1932 edition of Jewish Daily Eagle, P. 66)

In this anxious climate Abraham M. Klein wrote in French ("La Cause des Juifs" in Edition souvenir du Jewish Daily Eagle, 1932, Pp. 66-67),

"It is a historical anachronism to need to plead the Jewish case in the twentieth century, and in a civilized country.

"It was our hope that after Jews were granted equal rights in 1832, this question would never again reappear among the problems of any period. We had consoled ourselves with the belief that ancient prejudices had disappeared like the snows; religious fanaticism and chauvinism belong to the past; wickedness is crushed and intolerance is interred.

"We were already convinced that the tolerance freely accorded by the grandparents would never be revoked by the grandchildren.

"We were the more proud that Canada, the first of all British colonies to bestow civil rights on its Jewish citizens, would forever preserve its well-merited reputation for justice and tolerance.

"While Thomas Babington Macaulay was fighting in vain in the English House of Commons against the civil incapacity of British Jews, the Canadians under the leadership of the illustrious patient Louis-Joseph Papineau, had fully emancipated Quebec Jews in 1831, while Jews were excluded from the English parliament until 1858.

"Canada therefore has a reputation to maintain. For it was the eloquence of the French Canadians, who had themselves known oppression, which proclaimed the liberty of Canadian Jews.

"The Jew has adopted the national devise of this province and will always hold it before his eyes: Je me souviens."

As the Canader Adler wrote, "For a century we have been partners in the great precious patrimony which Canadian citizenship implies, with all its duties and responsibilities and with all the privileges it bears.

"Canadian Jews enjoy the same civil and political rights which are their neighbours'. They are equal before the law, free citizens in the full meanings of the term; citizens not only of Canada but of the great world empire which brought democracy to great heights and has everywhere raised the standard of the freest polity.

"We see Canada rising among the nations of the world as a land of progress and humane culture. We love this land and are bound to it, even though many of us have not yet had the time to strike our roots deeply enough here. But we have faith and confidence.

"The road to equality for Jews in other lands has not been easy. Our people has had to fight long for minimal rights, suffer, live through agony, survive discrimination and persecution, appeal to those in high places. Only after pogroms and barbaric massacres did some of our brethren gain the attention of authorities. It required a world catastrophe, a bloody revolution which overturned the political map, for some European countries to grant the Jews a modicum of human rights. Now how many of these governments are striving to revoke them?

"Young Canada, then a little known English colony somewhere in North America, rose to a height not yet attained by many European nations.

"As we observe the anniversary of this event, a hundred years later, we see the contrast even more sharply. We cannot pass the day but our deepest emotions are astir." (1932 Souvenir Issue to commemorate the Act of 1832)

Canadian Studies

Remarkably the centennial of the 1832 Act sparked the publication of several very important publications of Canadian Jewish history.

To situate this development of 1932, to be substantially supplemented only ten years later by the work of Louis Rosenberg, we need to remember that at the time there was only one major work of Jewish Canadiana available, A.D. Hart's The Jew in Canada which opened with B.G. Sack's History of the Jews in Canada.

The Yiddish cultural society of Canada was always aware of the date of 1832 in their lives.

Eighty years after the event the Montreal labor weekly, the Folks Shtimme edited by Leon Chazanovitch, adverted to the anniversary date.

The centenary of 1832 was noted with grave seriousness in Winnipeg and Toronto as well as in Montreal by the journalists and communal workers in the country.

In Winnipeg the Israelite Daily Press (Dos Yiddishe Vort) issued a 120-page 100th anniversary Souvenir of Jewish Emancipation in Canada, 1832-1932, and the 50th Anniversary of the Jew in the west, edited by H.E. Wilder.

This issue was devoted almost entirely to "An Outline History of the Jews in Canada" with a long section on western Canada which was, in effect, the first narration of Jewish history in that half of the country. Another historical work by Louis Rosenberg on "Jews in Agriculture in Western Canada" was included in the issue. (Pp. 54-58; 1-40)

This anniversary of the Act of 1832 was to have been marked by the appearance of Abraham Rhinewine's Looking Back a Century on the Centennial of Jewish Political Equality in Canada. However, "the sudden death of the author came in the bloom of his life and at the height of his creative powers. He left other works unfinished in the research of the history of the Jews of Canada, in which domain he was a pioneer worker and the writer of the first comprehensive account on the subject, and other studies in which he was engrossed at the time of his death." (Isidore Goldstick, Preparatory statement to Looking Back a Century; D. Rome. Clouds in the Thirties, section 7, Pp. 102-3)

Rhinewine's book outlined the stories of Aaron Hart, Ezekiel Hart, the testimony of B. Sulte and J. Tassé, and also assembled tributes to the Jewish element in Canada by various political and cultural personalities in the dominion.

This summary of Canadian Jewish history, based on thorough documentation, was revised and enlarged by Isidore Goldstick of London, Ont. and was published in Toronto by the Kraft Press in 1932. (149 p.) The work is complemented by important participatory statements from political leaders and premiers across the country.

The Montreal Jewish Daily Eagle (in Yiddish, the Canader Adler) issued a centennial Jubilee Edition commemorating the centenary of Jewish emancipation in Canada and its own twenty-fifth anniversary in English, Yiddish and French, edited by B.G. Sack, Israel Rabinovitch and H. Wolofsky. (D. Rome in André Beaulieu and Jean Hamelin. La Presse québecoise des origines à nos jours. Québec, Les Presses de l'Université Laval, 1979. t.4, Pp. 253-56)

Among its contents: B.G. Sack, "The Story of Jewish Rights in Canada" (Pp. 27-28); "Les Juifs durant le régime français" (Pp. 56-57); Julius Berger, "The Guarantees of Liberty in the Canadian Constitution" (Pp. 29, 35); Moses Gaster, "A Century of Jewish Life" (Pp. 36-37); A.A. Roback, "One Hundred Years of Yiddish Literature" (Pp. 38-40; also in Yiddish Pp. 38-41); H.E. Wilder, "The Jew of Western Canada" (Pp. 46-48); Lyon Cohen, "Recollections and Reminiscences, 1881-97) (Pp. 48-49); A.H. Jassby and Allan Bronfman, "History of the Federation of Jewish Philanthropies" (Pp. 50-53); and Maxwell Goldstein, "Brief Reminiscences of Half a Century" (P. 54); Israel Rabinovitch, "Les Anciens éléments dans le chanson populaire des Canadiens-français" in the translation of L.M. Benjamin (Pp. 59-61; also in Yiddish Pp. 32-35. The essay was included in the Yiddish volume which appeared in 1940, Of Jewish Music Ancient and Modern in A.M. Klein's translation. Montreal, Book Center, 1952. 321 p. The essay also appeared in English in the Canadian Jewish Year Book, vol. 3, 1941-42, Pp. 119-29)

The Yiddish section includes articles by B.G. Sack, "A Hundred Years of Canadian Jewry" (Pp. 19-23, 62-63); H. Wolofsky, "Twenty-Five Years Canader Adler" (Pp. 23-25); Israel Rabinovitch "Jewish Literary Activities in Canada" (Pp. 56-59); R. Brainin, "Some Memoirs" (P. 69); J.M. Dimenstein, "B.G. Sack, Historian of Canadian Jewry" (Pp. 66, 78); Jacob Gordon, "Recollections of a Toronto Rabbi" (P. 67); Samuel Kaplan, "Jews in the Maritime Provinces" (P. 68); B.G. Sack, "How Canadian Jews Won Equal Rights" (Pp. 69-70); Z. Cohen, "Recollections of a Montreal Rabbi" (Pp. 71-72); H. Weinberg "Memories

of old Jewish Montreal." (P.70); S. Talpis, "A Page out of the History of Montreal Jewry" (P. 74); L. Cheifetz, "The Jewish National Movement in Canada" (Pp. 75-78); M. Etziony, "Mental Illness among Canadian Jews" (Pp. 82-85); S. Wiseman, "Modern Jewish Education in Canada" (Pp. 86-87); S. Belkin, "The History of Jewish Colonization in Canada" (Pp. 91-92); H.M. Caiserman, "The Jewish School Question in the Province of Quebec" (Pp. 96-97); H. Hershman, "The War Orphans Project in Canada" (P. 98); P. Wolofsky, "Remembering Twenty-Five Years of the Canader Adler" (P. 110); M. Ginsburg, "The Jewish Community of Montreal" (Pp. 111-113); and "The Jewish Labor Movement in Canada" (Pp. 79-80)

Greetings on the centenary from Jews and from others all over the world reached Canada, including lovers of freedom from the U.S., France, Germany, Britain, Palestine, Lithuania, Poland, Argentina, South Africa and Uruguay.

THE SUBSEQUENT DISPOSITION OF THE ACT

The first general consolidation of the laws of Lower Canada was produced in 1845, two years after the Commissioners for Revising the said Statutes and Ordinances were appointed. I Will. IV, cap.57 was here reproduced without amendment, as number 6 of Class A, under the title of "Jews, Political Rights Of." Thus the act was reaffirmed after the Union of Upper and Lower Canada, but as having force only within the jurisdiction of the latter. The original title, preamble and enacting provision remained the same; a side note was added indicating its former designation.

The act next appeared in the Revised Statutes of 1861, where we find that it has been re-enacted as part of the larger "Act Concerning Certain Personal Rights." This is now chapter 34 of Title 6: "Rights of a Private and Personal Nature." The provision relating to Jews is found in article 7, and is without the original title or preamble. Furthermore, the wording has been slightly altered. Instead of ". . . all persons professing the Jewish religion being natural born British Subjects . . .", the provision reads ". . . all persons professing the Jewish religion and being natural born British Subjects . . ." In other words, these two qualities, instead of being dependent one upon the other, must now be separately present for the benefits of the act to apply.

Two legislative events occurred before the publication of the next revision of 1888. The first of these was the passage of the Rectories Act, which will be dealt with in more detail below. The other was the institution of the Civil Code in 1866. Although no religious group was specifically mentioned, the Code was so embracing in its creation of juridical personality that it was felt obvious that its provisions extended to all citizens, regardless of religious or ethnic background. Article 6 (now article 18) was borrowed directly from article 8 of the Code Napoléon, and granted every person "The full enjoyment of civil rights, except as otherwise expressly provided by law."

Thus, the introduction of the Civil Code, coupled with the guarantees of complete religious equality in the Rectories Act, rendered the act of 1832 obsolete. This fact was recognized legally in 1888, when the Revised Statutes of Quebec for that year was published. Appendix A to that revision, which listed "Acts and parts of Acts to be repealed from the day upon which the Revised Statutes of the Province of Quebec take effect, insofar as the said Acts and parts of Acts relate to the Province of Quebec and are within the authority of the Legislature thereof," has the force of law by virtue of the empowering legislation, the Revised Statutes Act, 1888, 51 & 52 Vict., c. 2. On page 2 of this Appendix, c. 34 of the Consolidation of 1861, the Act Concerning Certain Personal Rights, in which the 1832 provision was included, is declared to be repealed in full.

So it is that the act of 1832 is no longer in force because it is no longer needed. It had served its purpose well, however, both for the specific provision it contained, and as a forerunner for the wider legislative protection of the freedom of religion to be found in such statutes as the Rectories Act.

OATHS IN UPPER CANADA

Historical interest has centered during all these decades on the legislation of 1831 and 1832 as founding documents and because of this relation to the world-wide movement for Jewish emancipation. Montreal has always been proud of their being Lower Canada enactments.

In Upper Canada the liberation movement coincided with the recognition of the Montreal Jewish community on the religious level and the establishment in law of the Jewish congregation.

The colony to the west was clarifying the status of Jews in its own manner, even though there were very few of that persuasion there.

Dr. Henry Speisman has gone to great pains to find a Jewish presence in Ontario, but was able to trace a passing Shakespearean actor and some transient businessmen whose names are such as not to exclude their Jewish identification. The first York resident certainly Jewish, as of 1832, was Arthur Wellington Hart of Montreal; the Benjamin brothers Goodman and Samuel as of 1835, (Canadian Jewish Archives, new series, no. 20, P. 264), and Judah George Joseph as of 1838.

William, Samuel and Goodman Benjamin and their wives had appeared on Montreal congregational records in 1833.

Even ten years later, in 1842 there were but 200 Jews in Upper Canada, even though Louis Rosenberg notes a strange error in the colony's census of that year.

He attempted to clarify it 110 years later, when he wrote to the Ontario provincial archivist,

"On page 135 of volume 4 of the Census of Canada 1871, there appears a table showing the population of Upper Canada by Religions in 1842, giving the Jewish population of Upper Canada in that census year as 1,105, and the Jewish population of Wellington census district in that year as 913.

"There is evidently some error in this table, for there could not have been so many Jews in Upper Canada in 1842, and there would appear to be no record of any town in the census district of Wellington in which 913 Jews could have been resident at that time." (Letter, May 13,1952)

The table, including the erroneous figures for the Wellington district, reads,

"Census Districts	Total	Jews
Western	24,390	43
London	30,276	6
Talbot	11,286	1
Brock	17,286	1
Niagara	36,642	5
Gore	45,059	-
Huron	7,190	-
Wellington	14,476	913
Home	83,301	68
Newcastle	31,015	-
Colborne	13,706	-
Prince Edward	14,945	42
Victoria	13,196	-
Midland	34,446	18
Johnstown	32,445	5
Eastern	32,008	-
Ottawa	7,369	-
Dalhousie	16,193	3
Bathurst	21,655	-
Total	487,053	1,105"

As late as 1851-52 the census showed but 57 Jews in Toronto (City of Toronto 1934 Centennial Book. noted by N. Shemen)

In response to a form inquiry from Earl Bathurst, Secretary for the Colonies in 1817, in regard to marriage laws in effect, the attorney-general of Upper Canada informed him that marriages are celebrated in this colony in consequence of English statutes, except in the instances of certain religious sects such as Quakers, Jews, etc., who are governed by the same rules as the same sectaries in England. (Brodey, Pp. 179-80; Public Archives of Canada, Series Q, Pp. 53-55; H. Speisman. The Jews of Toronto, A History to 1937. Toronto, McClelland and Stewart, 1979, P. 11)

Even before the emancipating law was proclaimed in Quebec, in Jan. 1831, the attorney-general of Upper Canada, where there were virtually no Jews, recognized that they would enjoy the privilege of the marriage ceremony. (Canadian Jewish Archives, new series, no. 16, P. 149)

Assuming that the two Canadas had decided to act in concert in this liberation process, their legislatures could not follow the identical procedure, there being scarcely any Jews to initiate the process by petition.

The legislative body may have felt it more appropriate to resolve the Jewish rights problem -- only theoretical in Ontario -- not by raising fundamental problems of religion and theology; the legislature sought to deal with the instrument of discrimination, the oaths.

Through centuries Anglo-Saxon society had limited access and rights of subjects by so phrasing requisite oaths that many persons of conscience and of differing beliefs could not subscribe to them. Lower Canada had witnessed such use of oaths to keep Ezekiel Hart from the seat to which electors had designated him. The consequent debate demonstrated the complexity and the rootedness of the issues related to oaths. (Canadian Jewish Archives, new series, no.18, Pp. 237-40, 277-89)

Upper Canada decided to eliminate the entire problem by abolishing oaths from civil life.

Jan. 21, 1831

Whatever other motives led to this action in the Legislative Assembly of Upper Canada, on Jan. 21, 1831,

"Agreeably to notice, Mr. Attorney-General, seconded by Mr. W. Wilson, moves for leave to bring in a bill to abolish all oaths, religious tests, and declarations, tending to the exclusion of individuals from any office, trust, or employment, on account of their religious sentiments or opinions.

"Which was granted, and the bill was read a first time, and ordered for a second reading tomorrow."

Jan. 25, 1831

The Legislative Council had already acted in the matter, and on Jan. 25, 1831 in the Assembly "The Master in Chancery brought down from the honorable, the Legislative Council, a bill entitled, 'An act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the sacrament of the Lord's supper as a qualification for offices, or for other temporal purposes,' which that honorable house had passed, and to which they requested the concurrence of this house.

"The bill sent down from the honorable the Legislative Council, entitled, 'An act to dispense with the necessity of taking certain oaths, and making certain declarations in cases therein mentioned, and also to render it unnecessary to receive the sacrament of the Lord's supper as a qualification for offices, or for other temporal purposes,' was then read the first time, and ordered for a second reading tomorrow."

Feb. 17, 1831

On Feb. 17, 1831 the Assembly,

"Agreeably to the order of the day, the bill sent down from the honorable the legislative council, entitled, 'An act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned; and also to render it unnecessary to receive the sacrament of the Lord's supper as a qualification for offices, or for other temporal purposes,' was read a second time, and referred to a committee of the whole house.

"Mr. Perry was called to the chair.

"The house resumed, the black rod being at the door."

Later the same day, Feb. 17, 1831,

"The House went again into committee on the bill sent down from the honorable the Legislative council, entitled 'An act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and aso to render it unnecessary to receive the sacrament of the Lord's supper as a qualification for offices, or for other temporal purposes.'

"Mr. Perry in the chair.

"The House resumed.

"Mr. Perry reported the committee had risen.

"Adjourned."

Feb. 18, 1831

On Feb. 18, 1831 the Assembly returned to its own bill on the matter.

"Agreeably to the order of the day, the bill to abolish oaths and tests, &c. tending to exclude from office, was read the second time, and referred to a committee of the whole house.

"Mr. Jessup was called to the chair.

"The house resumed.

"Mr. Jessup reported progress, and obtained leave to sit again on Monday next.

"Mr. Attorney-General, seconded by Mr. Berczy, moves that the bill from the Legislative council, entitled, 'An act to dispense with the necessity of taking certain oaths, and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the sacrament of the Lord's supper as a qualification for other temporal purposes,' be placed upon the order of the day, for Monday next."

Nov. 9, 1832

On Nov. 9, 1832 in the Legislative Council,

"The Honorable and Venerable the Archdeacon of York, gave notice that he would on Monday the twelfth instant, bring in a Bill to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices or for other temporal purposes."

Nov. 12, 1832

In the Legislative Council, on Nov. 12, 1832,

"Pursuant to notice, the Honorable and Venerable the Archdeacon of York brought in a Bill to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices, or for other temporal purposes.

"The said Bill was read; and it was,

"Ordered, that the same be read a second time tomorrow."

Nov. 20, 1832

The Legislative Council again on Nov. 20, 1832,

"Pursuant to the order of the day, the Bill to dispense with the necessity of taking oaths and making certain declarations in the cases therein mentioned, and also to render it unneccesary to receive the Sacrament of the Lord's Supper as a qualification for offices, or for other temporal purposes, was read a second time and it was,

"Ordered, that the House be put into a Committee of the whole on Thursday next, Nov. 22, to take the same into consideration."

Nov. 22, 1832

On Nov. 22 the Legislative Council "was then again put into a Committee of the whole, upon the Bill to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices, or for other temporal purposes.

"The Honorable Mr. Wells took the Chair.

"After some time the House resumed.

"The Chairman reported that the Committee had gone through the Bill, had made some amendments thereto, and recommended the said Bill as amended to the adoption of the House.

"Ordered, that the report be received, and --

"Ordered, that the said Bill as amended be engrossed and the same read a third time tomorrow.

Nov. 23, 1832

On Nov. 23, 1832 in the Council,

"Pursuant to the order of the day, the Bill to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices, or for other temporal purposes, was read a third time and passed; and it was,

"Ordered, that the title be, 'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices or for other temporal purposes.'

"Whereupon the Speaker signed the Bill, and it was --

"Ordered to be sent to the Commons House of Assembly, by the Master in Chancery for the concurrence of that House."

In the Legislative Assembly, on Nov. 23, 1832,

"The Speaker reported that the Master in Chancery had brought down from the Honorable the Legislative Council, a bill entitled 'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper, as a qualification for offices or for other temporal purposes.'

"The bill sent down from the Honorable the Legislative Council, entitled 'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper, as a qualification for offices or for other temporal purposes,' was read a first time.

"Mr. Samson, seconded by Mr. Crooks, moves that the bill sent down from the Honorable the Legislative Council, entitled, 'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper, as a qualification for offices or for other temporal purposes,' be read a second time on Wednesday next, and that it be the first thing on the order of the day."

Nov. 26, 1832

The Oaths Bill, as sent down from the Legislative Council was read in the Assembly the first time and was ordered to be read the second time on Nov. 28.

Nov. 28, 1832

The Oaths and Test Bill was read in the Assembly the second time and was referred to the Committee of the Whole House. Mr. Burwell was called to the chair.

The House resumed and Mr. Burwell reported the bill without amendment.

"On the question for receiving the report, the yeas and nays were taken as follows:

"Yeas: Messieurs Boulton, Brown, Burwell, Chisholm, Clark, Elliott, A. Fraser, D. Fraser, R.D. Fraser, Jarvis, Jones, Ketchum, Lewis, Morris, Norton, Pinhey, Randal, Robinson, Roblin, Samson, Shade, Sol. General, Thomson, Werden, John Willson, Wm. Wilson. - 26

"Nays: Messieurs Bidwell, Buell, Cook, A. Macdonald, Shaver, White. - 6

"The question was carried in the affirmative, by a majority of twenty, and the bill was ordered for a third reading tomorrow."

Nov. 29, 1832

The Assembly on Nov. 29, 1832,

"Agreeably to the order of the day, the bill sent down from the Honorable the Legislative Council, entitled, 'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper, as a qualification for offices or for other temporal purposes,' was read a third time.

"On the question for passing the same, the yeas and nays were taken as follows:

"Yeas. -- Messieurs, Boulton, Brown, Chisholm, Clark, Duncombe, Elliott, A. Fraser, D. Fraser, R.D. Fraser, Jones, Ketchum, Lewis, Merritt, Morris, Mount, Norton, Pinhey, Randal, Robinson, Samson, Shade, Thompson, Werden, John Willson, Wm. Wilson -- 25

"Nays. -- Messiers, Bidwell, Buell, Campbell, Cook, Hornor, A. Macdonald, Shaver, White -- 8

"The question was carried in the affirmative, by a majority of seventeen, and the bill was signed.

"Mr. Samson, seconded by Mr. Duncombe, moves that a Message be sent to the Honorable the Legislative Council informing the Honorable House, that this House has passed the bill sent down from that Honorable House, entitled 'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices or for other temporal purposes,' without amendment.

"Which was carried, and Messieurs Samson and Duncombe were ordered by the Speaker to carry up the Message."

Dec. 17, 1832

On Dec. 17, 1832 in the Legislative Council a deputation from the "Commons House of Assembly brought up and delivered at the Bar of this House, a message in the following words, and then withdrew:--

"Mr. Speaker,

"The Commons House of Assembly has passed the Bill sent down by the Honorable the Legislative Council entitled, 'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices, or for other temporal purposes,' without amendment. (Signed) Archibald McLean, Speaker. Commons House of Assembly, 29th day of November, 1832."

Feb. 13, 1833

On Feb. 13, 1833 the Legislative Council met with the Lieut.-Governor at Government House and commanded the attendance of the Assembly. Upon their arrival he announced assent in His Majesty's name to a series of bills including no. 53, 'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned, and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices or for other temporal purposes.

So on Feb. 13, 1833 the third session of the eleventh parliament of the Province of Upper Canada enacted its chap. 12 of the Statutes 3 William IV,

"An Act to dispense with the necessity of taking certain Oaths and making certain Declarations in the cases therein mentioned; and also to render it unnecessary to receive the Sacrament of the Lord's Supper as a qualification for offices, or for other temporal purposes.

"Whereas it is inexpedient to impose upon persons admitted to offices in this Province, or persons called to the Bar, or admitted as Attornies, or becoming officers or members of any Corporation, the necessity of taking certain oaths, and making certain declarations which have been heretofore usually required in such cases: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, 'An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," and to make further provision for the Government of the said Province,' and by the authority of the same, That from and after the passing of this Act it shall not be necessary for any person appointed, or to be appointed, to any office in this Province, civil or military, or who is or may be a Mayor, or other officer or member of any Corporation therein, or for any person admitted, called or received, or hereafter to be admitted, called or received, as a Barrister or Attorney, to make any declaration or subscription, or to take or subscribe any other oath than the oath following, that is to say:

"'I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to His Majesty King William, (or the reigning Sovereign for the time being,) as lawful Sovereign of the United Kingdom

of Great Britain and Ireland, and of this Province dependant on and belonging to the said Kingdom; and that I will defend Him to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against His Person, Crown or Dignity; and that I will do my utmost endeavor to disclose and make known to His Majesty, His Heirs or Successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Him or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation, and renouncing all pardons and dispensations from any person or power whatosever to the contrary. So help me God.'

"And also, such oath for the faithful performance of the duties of his office, or for the due exercise of his profession or calling, as hath been heretofore required, or shall be hereafter required in any Act to be passed in that behalf.

"II. And be it further enacted by the authority aforesaid, That the oath of allegiance herein prescribed and set forth, shall, in case of a Queen succeeding to the Crown of the United Kingdom of Great Britain and Ireland, be taken in the following words, that is to say:

"'I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen ___, (the Queen who shall be then reigning,) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province dependant on and belonging to the said Kingdom; and that I will defend Her to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against Her Person, Crown and Dignity; and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her Heirs and Successors, all treasons and traitorous conspiracies and attempts which I shall know to be against Her or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation, and renouncing all pardons and dispensations from any person or power whatsoever to the contrary. So help me God.'

"III. And be it further enacted by the authority aforesaid, That the oath of allegiance herein prescribed and set forth, together with the oath of office, or oath for the due exercise of any profession or calling, respectively, shall be and is hereby required to be taken within the same period, and in the same manner, and subject to the like disabilities and penalties for the omission thereof, as is now provided with respect to the oaths heretofore required to be taken in any case, respectively.

"IV. And whereas it is expedient to dispense with the necessity of taking the Sacrament of the Lord's Supper, according to the rites or usage of the Church of England, for the purpose of qualifying any person to hold office in this Province, or for any other temporal purpose, privilege or advantage whatsoever: Be it therefore further enacted by the authority aforesaid, That notwithstanding any thing contained in any law or statute to the contrary, it shall not be necessary, from and after the passing of this Act, for any person within this Province, for any such purpose, as aforesaid, to take or receive the Sacrament of the Lord's Supper according to the rites or usage of the Church of England, or to deliver a certificate, or make proof of his having received the said Sacrament in manner aforesaid; and that no person shall hereafter, within this Province, be subject to any penalty, forfeiture, incapacity or disability whatosever, for or by reason of any neglect or omission to take or receive the said Sacrament."

But the Statutes of Upper Canada, 1833 also include an act (chap. 2) re the partition of real estate which is not found in the collection of statutes to the time of union, and the Oath act becomes chap. 12 in this collection of laws.

From the passing of the Act it was not necessary for any person to be appointed to any office in this Province, civil or military, who was or may be a Mayor, or for any person admitted, called as a Barrister, advocate, notary, attorney, solicitor, or proctor, to make an oath other than the following: -- "I. A.B. do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty the King...I will defend him...disclose treason, etc. so help me God." (Brodey)

CANADA ACTS ON OATHS

In order to make the laws on oaths uniform in the United Province of Canada, which was composed of both Upper and Lower Canada, this Lower Canada act was repealed when the parliament of the United Province of Canada passed its chap. 18, 13 & 14 Vict.,

"An Act for making one uniform provision respecting certain Official and other Oaths to be taken in this Province, and for other purposes therein mentioned."

This act which received royal assent on July 24, 1850 reads:

"Whereas the Oaths required to be taken as a qualification for Office or for other temporal purposes, are in Upper Canada prescribed by an Act of the late Parliament of that part of the Province passed in the third year of the reign of His late Majesty King William the Fourth, chaptered twelve, and intituled,'An Act to dispense with the necessity of taking certain oaths and making certain declarations in the cases therein mentioned; and also to render it unnecessary to receive the Sacrament of the Lord's Supper, as a qualification for offices or for other temporal purposes;' And whereas with a view to making the law uniform in this respect in both sections of the Province, it is expedient to repeal the said Act and to re-enact the provisions thereof, making them applicable to the whole Province: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, 'An Act to re-unite the Provinces of Upper and Lower Canada,' and for the Government of Canada, and it is hereby enacted by the authority of the same, That the said recited Act shall be and the same is hereby repealed.

"II. And be it enacted, That from and after the passing of this Act, it shall not be necessary for any person appointed or to be appointed to any office in this Province, civil or military, or who is or may be Mayor or other officer or member of any Corporation therein, or for any person admitted, called or received or hereafter to be admitted, called or received as a Barrister, Advocate, Notary Public,

Attorney, Solicitor or Proctor, to make any declaration or subscription, or to take or subscribe any other oath than the oath following, that is to say:

"'I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, (or the reigning Sovereign for the time being,) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province, dependent on and belonging to the said Kingdom, and that I will defend Her to the utmost of my power against all traitorous conspiracies or attempts whatever which shall be made against Her Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her Heirs or Successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Her or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation, and renouncing all pardons and dispensations from any person or power whatsoever to the contrary; So help me God.' And also such oath for the faithful performance of the duties of his office or for the due exercise of his profession or calling as hath been heretofore required, or shall be hereafter required in any Act to be passed in that behalf.

"III. And be it enacted, That the form hereinbefore set forth, and no other, shall be that of the Oath of Allegiance to be administered to and taken by all persons in this Province who, either of their own accord or in compliance with any lawful requirement made on them to take the Oath of Allegiance to Her Majesty, Her Heirs or Successors, or in obedience to the directions of any Statute either of the Imperial or Provincial Parliament therefor, shall be willing or desirous to take the same to Her Majesty, Her Heirs or Successors in this Province; and the power to tender and adminster such Oath is hereby declared to be vested in all Magistrates and other Officers now lawfully authorized or hereafter to be lawfully authorized, either by virtue of their Office or by Special Commission from the Crown for that purpose, to administer the Oath of Allegiance in this Province or any part thereof.

"IV. And be it enacted, That the said Oath of Allegiance hereinbefore set forth, together with the Oath of Office or Oath for the due exercise of any profession or calling, respectively, shall be and is hereby required to be taken within the same period and in the same manner, and subject to the like disabilities and penalties for the omission thereof, as is now by law provided with respect to the Oaths heretofore required to be taken in any case respectively.

"V. And be it enacted, That all such persons as are or shall be allowed by law to affirm instead of swear in civil cases in this Province or any part thereof, shall be received to take an affirmation of Allegiance in the like terms mutatis mutandis, as those herein and hereby prescribed for the said Oath of Allegiance, which affirmation of Allegiance shall in all cases be received and accepted from such persons in lieu of such oath, and the taking of such affirmation of Allegiance before the proper officer shall in the case of all such persons have the like effect to all intents and purposes whatsoever, as if the same had been the said Oath of Allegiance herein and hereby prescribed as aforesaid; and the power to tender and administer such affirmation to all such persons so entitled to take the same, is hereby declared to be vested in all Magistrates and other Officers now lawfully authorized or hereafter to be lawfully authorized, either by virtue of their office or by special commission from the Crown for that purpose, to administer the Oath of Allegiance in this Province or any part thereof.

"VI. And be it enacted, That it shall not be necessary for any person for the purpose of qualifying himself to hold office in this Province or any part thereof, or for any other temporal purpose, privilege or advantage whatsoever within the same or any part thereof, to take or receive the Sacrament of the Lord's Supper according to the Rites or Usages of the Church of England, or to deliver a Certificate or make proof of his having received the said Sacrament in manner aforesaid; and that no person shall hereafter within this Province or any part thereof, be subject to any penalty, forfeiture, incapacity or disability whatsoever, for or by reason of his not having so taken or received the said Sacrament."

In 1859 when The Public General Statutes which apply exclusively to Upper Canada (Revised Statutes for Upper Canada, 1859) was issued, the Upper Canada act of 1833 was not even mentioned.

In his thesis on "Political and Civil Status of the Jews in Canada", submitted to the Jewish Institute of Religion in 1933, A. Brodey noted that it was the recognized practice for Upper Canada by 1835 that a Jew should be sworn on the Old Testament and they were allowed to put on their hats when sworn. (P. 166; Provincial Justice Keele. Oaths, 1835 issued as a compendium of practice and a summary of law; Frank vs. Carson. U.C.C.P., P. 135; Crankshaw. Magistrate's Manual, 3rd ed. 1921, P. 221)

So the oath question was resolved. But what of the political rights of Upper Canada Jews in general?

Whatever the law governing the situation at the moment in the legislature of the United Province of Canada, Henry Judah was able to take his seat for Champlain County in the assembly in 1843. (Canadian Jewish Archives, new series no. 20, P. 223)

NATURALIZATION OATH

Early in the history of the United Canada there was occasion to legislate on a question in which the forms of oaths entered.

A large number of residents in the English colony petitioned for naturalization, many of them Americans. The legislature dealt with some of them individually. Sir Allan Napier MacNab, leader in the government, served notice on July 6, 1841 of a more general bill to naturalize some thirty or forty petitioners "instead of each member pushing on the claims of their respective friends."

But in the summer of 1841, the legislature passed a more general act, sometimes called the Civil Rights Bill, an act to secure and to confer upon certain inhabitants of this province the civil and political rights of natural born British subjects. (Assented to Aug. 27, 1841; Act 4-5 Vict., chap. 7)

On July 12, 1841 the Hon. Samuel Bealey Harrison, member of the Executive Council and Provincial Secretary, presented a bill to this effect which was then read for the first time.

It was read the second time on July 19 and referred to the committee of the whole house. It was thus considred on July 27, under the chairmanship of Michel Born of Rimouski, but a number of members had retired, the house was adjourned for want of a quorum.

The discussion on the bill on July 28 before passing its second reading was far-ranging. It gave the members an opportunity to vent their views about the constitution, Americans, the rebellion of 1837, the war of 1812 and even about the American Revolution, about immigration and industry, not to speak of partisan politics; but the questions of oaths and religions were not mentioned.

A remarkable anti-American debate took place at the third reading. Sir Allan MacNab and John S. Cartwright of Lennox noting that, aside from the Loyalists during the War of American Independence, many immigrants from the south "are either hostile or totally indifferent as to what government they live under" and that U.S. immigration "is therefore neither desirable nor expedient."

It had been proposed that naturalization be granted after five years' residence, but John Simpson of Vaudreuil argued that, since it required seven years to learn a simple trade, there should be at least as long a probation required before a foreigner could be endowed with the highest attribute of a British subject.

The bill passed its third reading on July 29, 1841.

A month later, on Aug. 23,1841, the Legislative Council informed the Assembly through John Godfrey Sprague, Master of Chancery, that it had passed the act, but amending it to make the waiting period seven years instead of five.

When this was taken upon the 25 of Aug. Sir Allan McNab, he of the McNabs, whom G.M. Wrong calls "the spokesman for the last remnant of the Family Compact," made another effort to delay assembly approval, and Thomas C. Aylwin of Portneuf remarked that the bill "threatened to inundate the country with renegades." But they spoke in vain; the assembly concurred with the amendments from the council and Mr. Harrison was delegated to inform the council accordingly.

The Governor General informed the legislature on Aug. 27, 1841 of the royal assent to the naturalization bill. (Elizabeth Nish, ed. Debates of the Legislative Assembly of United Canada, 1841-67, vol.1, 1841. Montreal Presses de l'Ecole des hautes études commerciales, 1970)

What concerns the reader of Canadian Jewish annals in the history of this legislation is the absence of any discussion in the legislature of the new constitutional jurisdiction that was now Canada on the accessibility of the provisions and privileges accorded by this act to Jewish persons and more particularly in the form of oath requisite from applicants for naturalization under this law.

By an appended schedule, which is an integral portion of the act as legislated, there is "an oath" set out, to be taken by any candidate for naturalization, which contains no term or phrase which would exclude a Jew, such as "on the true faith of a Christian."

The oath reads,

"I swear (or solemnly affirm, according to the circumstances) that I at present reside in the Province of Canada...and I furthermore swear (or solemnly affirm) that I shall be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland and of this Province as its dependency, so help me God."

Though neither the 1841 law nor the debates that surrounded it refer to Jews even indirectly, Canadian law recognizes its application to the Jews of the dominion. The Consolidated Statutes for Lower Canada reaffirmed the political rights of Jews as resting on this Canadian law as well as on the 1832 Lower Canada law.

JOSEPH HOWE

Only several years after the passage of the Rectories Act, a maritimer who later came to be regarded as a great Canadian commented as a witness to the legislative process of granting such equality to the Jews of England.

As Louis Rosenberg described it in a memorandum of Feb.17, 1949,

"From the years 1847 to 1858 numerous attempts were made to secure the passage of a bill by the Parliament of the United Kingdom to permit Jews to take their seats as members of the House of Commons when elected, But although Baron Lionel de Rothschild was elected three times as Member of Parliament for the City of London by a large majority, he was refused permission to take his seat in the House of Commons on the ground that he could not take the prescribed oath 'on the faith of a Christian'. The question of the emancipation of the Jews was hotly debated in the House of Commons and the House of Lords, and twice were bills which would have given full political emancipation to Jews in Great Britain given all three readings in the House of Commons only to be defeated in the House of Lords, until finally the 'Emancipation Act' was passed by both Houses of Parliament in Great Britain in 1858.

"Joseph Howe, the son of a U.E.L., was born in Halifax, N.S. on December 13th, 1804 and died in 1873. He was a newspaper publisher and editor of the Acadian and the Nova Scotian.

"Howe was elected member of the Provincial Legislature for Halifax in 1836 and during a stormy political career did much to obtain responsible government for Nova Scotia in 1848.

"In 1850, he visited England in an attempt to obtain a guarantee from the Imperial Government for a bond issue to finance the building of the Inter-Colonial Railway, and was subsequently appointed Chief Commissioner of Railways when the Inter-Colonial Railway was built.

"He visited England when the bill which would have emancipated the Jews in Great Britain was being debated in Parliament. The comment which he subsequently made upon this debate when he returned to Canada is of considerable interest. It is contained in The Speeches and Public Letters of the Hon. Joseph Howe which was edited nominally be William Annand, M.P.P. but really by himself, and published in Boston by John P. Jewett in 1858.

"He commented on English indifference to Canadian affairs,

"'One subsidy to some petty European potentate has often cost more than all our railroads would have cost, and yet they would have developed our resources in peace and formed our best security in time of war...And yet these Provinces are so lightly valued, that a loan for public improvement cannot be guaranteed, or a single seat in the National Councils yielded, to preserve them.

"'Here sir, is work for the highest intellects -- for the purest patriots on both sides of the Atlantic. Here is a subject worthy of the consideration of the largest-minded British statesmen now figuring on the stage of public life. In presence of this great theme, how our little squabbles sink into insignificance, as the witches' cauldron vanishes from the presence of Macbeth.

"'How insignificant are many of the topics which they debate in the Imperial Parliament compared with this. I have seen night after night wasted, while both Houses discoursed the grave question, whether or not a Jew should sit in the House of Commons; a question that it would not take five minutes to decide, in any Legislature from Canada to California. How often have I said to myself: I wonder if it ever enters into the heads of those Noble Lords and erudite Commoners who are so busy with this Jew, that there are two millions and a half of Christians in British America, who have no representative in either House.' (vol.2, P. 205)

"He was Premier of Nova Scotia from 1860-63, and although he had previously advocated a federal union of the provinces of British North America, he opposed Confederation in 1867 on the grounds that the terms offered to Nova Scotia were not sufficiently generous. He subsequently entered the cabinet of Sir John MacDonald in 1869 as president of the council.

THE FREEDOM OF RELIGION IN ONTARIO AND QUEBEC

Introduction

Of what does the freedom of religion consist? For the purpose of this study it will be taken to mean the freedom of religious belief and tradition outside any interference by the state. It would widen the scope of this inquiry excessively to include within our definition the freedom from private acts of discrimination; for that reason, the Human Rights legislation now in force is not discussed. This is usually concerned with the prohibition of restrictions imposed by individuals on the basis of membership, whether real or apparent, in some racial, ethnic, or religious group, whereas our present interest lies in the manner in which the government seeks to intervene in the exercise of religion by its constituents.

While administrative participation in religion has had a large role in forming the Canadian experience, certain topics, such as the various Lord's Day Acts, or the denominational schools controversy, have been adequately covered elsewhere. For students of Canadian Jewish history, consideration must be given mainly to the establishment or disestablishment of churches, and the effect of the procedural regulations by which civil status is controlled, but which only incidentally touch upon religion. The latter poses problems in the areas of, for example, the solemnization of marriages, or the taking of oaths; the former is of importance because of the disadvantages under which the non-established denominations are forced to exist.

What, then, is an established church? A church is said to be established when it is, as the Oxford English Dictionary has it, "placed in the position of a state church." In the United States, a state church is usually interpreted to mean one with state funding (see: Laurence H. Tribe, American Constitutional Law, p. 812). The Canadian authors, however, seem undecided as to whether an established church would be one funded by the state, or simply one recognized as such by statute. Whatever the theoretical position, the establishment of any church carries with it some very practical privileges that do not accrue to other denominations, such as, apart from the possibility of state funding, the right to hold and dispose of property (i.e.: freedom from 'mortmain'), to form corporations and empower trustees, to register acts of civil status, etc. The more exclusive the privileges the more nearly the church holding them may be said to be 'established'.

It is clear from the record that churches have, from time to time, been established in some parts of Canada. In the Maritimes, the Anglican Church was recognized by legislation from 1758 in Nova Scotia (by 32 Geo. II, c. 5); from 1786 in New Brunswick (by 26 Geo. III, c. 4); and from 1802 in Prince Edward Island (by 43 Geo. III, c.6). Inasmuch as these statutes have been incorporated into the constitutions of these provinces by virtue of s. 129 of the Constitution Act, 1867 (30 & 31 Vict., c. 3, formerly called the BNA Act, 1867), and have never been specifically repealed, the Anglican Church continues as the established church in these three provinces. D.A. Schmeiser, in his Civil Liberties in Canada, p. 55, acknowledges the existence of this surprising situation, but claims it is of no practical importance.

Although the Roman Catholic Church was the established church of New France under the Edict of Nantes, which provided, among other things, that none but Roman Catholics could settle in the colony, it was probably legally disestablished at the time of the British Conquest, and was certainly so, at any rate, by the Treaty of Paris in 1763. Thereafter, various attempts were made by the Church of England to attain a similar position. A series of Acts dealing with the creation of Protestant Rectories was passed by the several authorities involved, culminating in the Rectories Act of 1851, which settled the question once and for all by disestablishing the Church of England (if there had been any doubt as to its status) and declaring the equality of all religions throughout the Province of Canada. As this Act has since become constitutional, as far as Ontario and Québec are concerned, it is of paramount importance for students of Canadian Jewish history, and it is, therefore, to this Act that we now turn.

The Rectories Act: Background

Although now known, in the current consolidations, as the Freedom of Worship Act, or, in Québec, as La loi de la Liberté des Cultes, the original name for this vital law of 1851 was: "An Act to repeal so much of the Act of the Parliament of Great Britain passed in the Thirty-first year of the Reign of King George the Third, and Chaptered Thirty-one, as relates to Rectories, and the presentation of Incumbents to the same, and for other purposes connected with such Rectories," or, in brief, the Rectories Act. It may seem strange that the foundations of religious equality in Ontario and Québec were laid in an Act respecting -- of all things -- Protestant rectories; however, there are historical reasons for this peculiar combination which are best examined chronologically.

As the importance of the Rectories Act itself is also better understood through a survey of the antecedent and related legislation, it is necessary to return to one of the earliest of our constitutional documents, the Constitution Act, 1774 (14 Geo. III, c. 83, formerly called the Québec Act). An Act of the Imperial Parliament, it is constitutional for Canada because it could not be amended or repealed except through another Act of Great Britain. By this measure, all the former French colonies and possessions ceded to Britain under the Treaty of Paris (signed February 10, 1763), were consolidated as the (now British) province of Québec, the boundaries of which were extended westward to the junction of the Ohio and Mississippi rivers. Within this vast new territory, "above sixty-five thousand persons professing the religion of Rome" resided. Perhaps because her own religious differences had only recently been settled, s.5 was enacted "...for the more perfect security and ease of the minds of the inhabitants of the said province." It was therefore declared "That His Majesty's subjects, professing the religion of the church of Rome of and in the said province of Québec, may have, hold, and enjoy, the free exercise of the religion of the church of Rome, subject only to the King's supremacy...; and that the clergy of the said church may hold, receive, and enjoy, their accustomed dues and rights, with respect to such persons only as shall profess the said religion."

By s. 6, however, it was "Provided nevertheless, That it shall be lawful for His Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant clergy within the said province, as he or they shall, from time to time, think necessary and expedient." Thus, on the one hand, a certain religious tolerance was established for the colony, while, on the other, a certain tolerance was built into the Act for the possible establishment of a state religion.

The next step was taken by the Constitution Act, 1792 (31 Geo. III, c. 31). Also an Act of the Imperial Parliament, its main purpose was to divide the Canadian territories into two smaller provinces, Québec and Ontario, and to provide for legislative assemblies for each. In addition to the generality of s.33, by which the laws then in force, including the earlier provisions of the Constitution Act, 1774, were continued "as if this Act had not been made," specific protection for both the religious freedom of Catholics and the opportunity for the expansion of Protestantism was accomplished

by s. 35. Other sections, that is ss. 36-41, set out the procedures by which the famous Rectories were to be created; the importance of these to non-Protestants lies in the manner in which grants of land were to be made to the Church of England within each parish or township with the express purpose of providing it with funds. All the rents, profits, or emoluments arising from lands equal in value to one-seventh of all grants made within that particular parish or township were to be "applicable solely to the maintenance and support of a Protestant clergy within the province in which the same shall be situated, and to no other use or purpose whatever." It should be noted here that while these monies were intended expressly for the benefit of the Church of England and for no other denomination, whether Protestant or not, the whole of these provisions is to be read as a limitation to the otherwise absolute freedom granted to Catholics, and, therefore, as a merging of the two issues. To stress the importance of these matters, and to ensure the survival of the enactments, s. 42 provides that no amendment, repeal, or other alteration of any of the clauses dealing with religion could be effected by the legislative body of either province acting alone, but that any such bill would have to be laid before the Imperial Parliament before it became lawful for the Sovereign to signify Royal Assent. This procedure differs greatly from that relating to ordinary Acts of the Canadian Legislatures, which were normally assented to by the Governor-General (or, at his discretion, in exceptional cases, reserved for the personal assent of the monarch), after three readings in the appropriate House or Houses, without the necessity of the intervention of the Imperial Parliament. Of interest to students of Canadian Constitutional Procedure is the fact that this intervention did not take the form of an Imperial Act, but was limited to simple motions of concurrence in both Houses. The result would then be a Canadian Act, with both Royal and Imperial approval.

The provisions relating to rectories lay dormant for almost fifty years. None had actually been established by the Constitution Act, 1792, but the power to do so had been placed in the hands of the Governor. For whatever reason, the first Governor to avail himself of this power was Sir J. Colborne who, beginning in January, 1836, established some 57 rectories over eighteen months, 44 of which were actually filled. All were situated in Upper Canada; a complete list, with the names of the first rectors, appears as Appendix O to the tenth volume of the legislative Journals.

Note that the Governor did not need the approval of the Assembly for this action, nor did he seek it. The result was quite a furious little scandal, though, judging by the published reports of the day, the anger was not so much over the content of the orders but the manner in which they had been carried out. In an age when the demands for responsible government were reaching fever pitch, an independent Governor was not much appreciated. The legislatures of both Upper and Lower Canada, however, remained silent.

The Constitution Act, 1840 (3 & 4 Vict., c 35, formerly called the Act of Union), yet another Imperial Statute with constitutional effects for Canada, did not affect the earlier legislation insofar as that earlier legislation dealt with either the freedom of Her Majesty's Catholic subjects or the establishment of Protestant rectories. Not only were all previous Laws, Statutes, and Ordinances then in force continued, as is usual in an Act of this type, but, by s. 46, they were to be continued "as if this Act had not been made, and as if the said Two Provinces (i.e., Ontario and Québec) had not been united as aforesaid." Thus were Governor Colborne's rectories protected. Further, although the limitations set out in the older Constitution Act, 1792 to the powers of the Provincial Legislature were continued by s. 42 of the Constitution Act, 1840, all manner of other subjects were added to the list of Provincial bills requiring Imperial Consent. In addition to measures affecting either Catholic worship or Protestant rectories, "any Bill or Bills...containing any Provisions which shall in any Manner relate to or affect the Enjoyment or Exercise of any form or Mode of Religious Worship, or shall impose or create any Penalties, Burdens, Disabilities, or Disqualifications in respect of the same," had to be submitted to the Imperial Parliament before becoming law.

At that time, of course, the composition of the Canadian population was profoundly different than it had been in 1774. Apart from the large French Catholic majority in Québec, and the somewhat smaller, but growing, Anglican community, a number of other Protestant sects were becoming evident. By 1851, the Anglicans were in fact a minority even if the Roman Catholic population was not counted; they formed a minority in both the Legislative Assembly and Legislative Council sitting in the fourth session of the third Parliament of the Province of Canada (The Examiner, July 30, 1851). The Church of Scotland (later the Presbyterian Church of Scotland) contingent, on the other hand, was large and vocal, and was particularly anxious to reduce the status of the Church of England and to deprive its rectories

of the funding then guaranteed by law. To this end they were willing to combine with other non-Anglican groups, thereby ensuring that any measure protecting the freedom of religion would have to be made general. For the student of Canadian Jewish history, it is more than interesting to note that this general protection, which did in fact result, was the almost accidental result of the various Protestant denominations considering themselves to be separate religions! Still, the stage was now set for the passage of this important constitutional enactment; all that was lacking was an opportunity.

The Rectories Act: Passage

Considering the number of minor curiosities attached to this Act, it is perhaps not ironic at all that the impetus to abolish the rectories came from the petition of a minister of the Church of England, a Martin McKinnon, rector of the Parish and Township of Vaughan. This petition was introduced to the Assembly by Mr. Mackenzie, who was to play an important role in the debates, on May 20, 1851; it was ordered printed for the use of the members of the House on June 5, 1851. In the petition, Mr. McKinnon complained that the establishing provisions gave the power to appoint rectors to the Governor, whereas he, McKinnon, was of the firm belief that this power should lie in the hands of the congregation. Accordingly, he prayed that the House would adopt such measures as were necessary to correct the situation.

The non-Anglican coalition lost little time taking advantage of this opportunity. On June 5, 1851, Mr. Morrison rose to move "for leave to bring in a bill to repeal so much of the 31st Geo. 3, chap.31, of the Parliament of Great Britain, as relates to Rectories, and the presentation of Incumbents to the same, and for other purposes connected with such Rectories" (Journal of the Legislative Assembly, Vol. X). His introductory remarks laid bare the motives behind the bill: "I believe that this power is fraught with much evil to the peace and welfare of the country...I am utterly opposed to any connection between the Church and State. These clauses of the Act authorizing the establishment of the rectories and the presentation of ministers are, in my opinion...evidence of a Church and State connection. No matter what arguments might be used in favour of such a connection in England and elsewhere, in this country it is inconsistent with the position and circumstances of the country, and totally opposed to the genius of the

people. I am opposed to granting any privilege either in form or in fact, to any church; they should all stand alike with regard to the State" (Debates of the Legislative Assembly, June 5, 1851). Almost as an afterthought, he added that he thought it desirable to place the power of appointment of rectors in the hands of the Bishop or church authorities, and that he was sure no member of the House would oppose that part of the Bill. After that rousing speech, leave to introduce the Bill was granted (and, as is always the case in these circumstances, the record shows unanimity); the "same was received and read for the first time; and ordered to be read a second time on Thursday the nineteenth instant."

Mr. Mackenzie, the Honourable Member for Haldimand, the original sponsor of the McKinnon petition, and one of the more 'militant' members of the Presbyterians, was dissatisfied with the fact that the bill as proposed purported to 'freeze' the status of the existing rectories -- he wanted them all abolished outright. On June 16, 1851, therefore, he moved the first of a long series of delaying motions, seconded by Mr. McFarland, proposing that the petition (not the bill) be referred to a committee of seven members to examine its contents and to report with all due diligence, by bill or otherwise, with power to convoke other persons, papers and records. The House apparently being satisfied with the first bill, this motion was defeated 47 to 9.

A petition calling for the complete abolition of the existing rectories was presented, on July 16, not to the Assembly, but to the Legislative Council, by the Regular Baptist Union of Canada. It was introduced into that House by the speaker, but as the Assembly was already considering a bill that dealt with the matter, no further action was taken. Mr. Mackenzie, however, not content with this inaction, introduced, on the same day, a motion into the Assembly to the effect "that no grant of money be made out of the Public Revenue of this Province to any Institution or Public Body which shall be under the management or control of any particular Religious Denomination, or which shall be exclusive or sectarian in its character." He was joined only by Mr. Boulton, Mr. Hopkins, and Mr. Notman, and so his second attempt at outright abolition was defeated, 48 to 4.

Not until July 24, 1851, did the Legislative Assembly read the Morrison bill for the second time. A most revealing debate then ensued. Mr. Morrison, on the motion to have the bill read a second time, rose to address the House on the issues in question again: "As

I am opposed to the slightest connection between any Church and the State, it is much to be regretted that, prior to 1836 the Upper Canada Legislature had not repealed those claims. I believe that if the attention of Parliament had been directed to them they would have been erased from the statute-book, and much of the intense and hostile feeling which has existed since the unfortunate and unwise act of Sir John Colborne would have been avoided. The endowment of rectories and the appointment of ministers to particular churches is one of the strongest ties that can possibly exist between the State and the Church, and so long as these clauses remain part of our constitution, it is in vain for parties to deny the existence of a state religion in this country. Very few, indeed, argue in favour of a state religion in Canada, peopled as it is with persons of all creeds and from all nations, and equally entitled to the favour and protection of the Government...I have often been told that no Government would dare to commit such an act of folly as the erection of a further number of rectories, and that there is, in fact, no necessity for this bill. I am of that opinion, but these clauses, having remained dormant for 50 years, were misused by Lord Colborne, a Governor, in creating these rectories without any notice -- without the slightest apprehension on the part of the people of the Province that such an act was even under consideration, and it is therefore better to take precaution against it." He then referred to a report by the Bishop of Toronto to the Colonial Secretary defending the establishment of the rectories. In it, according to the British Colonist of July 25, the Bishop had "sneered" with the greatest contempt at the Church of Scotland and all other dissenters for imagining that they were on equal terms with his Church. In supporting the action of Sir John Colborne, the Bishop endeavored to show what he (the Bishop) termed "the illiberal and intemperate hostility of the Kirk, and her unjust aggressions in putting herself on an equal footing with the State Church."

Mr. Morin the speaker then having informed Mr. Morrison that his time was up, the Honourable Member concluded with an extract from Lord Stanley, writing in 1835: "That if any exclusive privileges be given to the Church of England, not only will the measure be repugnant to any principle of sound legislation, but contrary to the spirit and intention of the Act of 1792, under which the Reserves were made for the Protestant Clergy. I will not enter further into it at present, except to express the hope that the House will guard Canada against evils which religious dissension have already provoked in this country and in Ireland, when we have examples to teach us what to shun: we have seen the evil consequences of this system at home -- God forbid we should not profit by experience, and especially in legislating for people bordering the country where religious intolerance and religious

exclusions are unknown; a country to which Parliament looked in passing the Act of 1792 on all the great men who argued the question when expressly declared. It is important that His Majesty's Canadian subjects should not have occasion to look across the narrow border that separates them from the United States, and see anything there to envy."

Others entered the debate. Speeches were made by Mr. Hincks, Wilson, Boulton, Lafontaine, and Baldwin. Mr. J. Cameron, the Honourable Member for Cornwall, then rose to complain about a portion of the proposed bill which read: "provided that nothing in this Act shall be taken to legalize any rectories hitherto erected," a clause which he felt would abolish the present rectories "by a side wind." Agreement was reached on the necessity of preventing any more rectories from being established in the future, but the question of the present rectories was left unresolved. Mr. Wilson seconded by Mr. Hopkins, then moved that the bill be referred to a Select Committee to consider the matter. The composition of this Committee was to be: Baldwin, Cameron, Morrison, Smith, and Wilson.

At once Mr. Mackenzie was on his feet with an objection. He felt the whole thing was a farce, and that the bill was sure to return amended in such a way as to allow the existing rectories to stand. "If the Church of England is not well represented in the Government it is certainly well represented in the Committee. The whole thing has been got up for effect, and everyone has come prepared to perform his part; I will also perform mine by voting against the motion." Mr. Hincks then moved to substitute Mr. Notman for Mr. Smith, and, after some further discussion, Mackenzie withdrew his objections. The amendment and the main question having passed, the bill was read a second time, and referred to a Select Committee for further study.

Four days later, it was proposed to request the Governor to decide the legal problem so that the parties could bring the issue of the already established rectories before the judicial committee of the Privy Council. This apparently innocuous proposal was approved by the Assembly by a vote of 58 to 3, Hopkins, Mackenzie, and Notman against. It is not difficult to guess at the principle behind this division. Even as we note that the status of the rectories themselves holds little interest for the student of Canadian Jewish History, it should be pointed out that compromises necessary for the resolution of the hostility between what are, after all, two very similar Protestant denominations held many advantages which extended to the non-Christian world. For that reason, these parliamentary manoeuverings bear some scrutiny.

The Committee reported the next day, July 29, that it had amended the bill by deleting the line which "provided that nothing in this Act shall be taken to legalize any rectories hitherto erected," and substituting: "Provided always, that neither such repeal, nor anything herein contained, shall in anywise affect any proceedings heretofore had, whereby certain Parsonages or Rectories were erected and endowed, or supposed to be erected and endowed by the Authority aforesaid, or whereby certain Incumbents or Ministers were presented, or supposed to be presented, under the same Authority, to such Parsonages or Rectories, or any of them, but the legality or illegality of all such proceedings shall be left open to be adjudicated upon and determined as if this Act had not been passed (emphasis added)." The House was to sit the next day, July 30, and consider this amendment in the Committee of the Whole.

Instead, the next day Mr. Notman, seconded by Mr. Hopkins, sought leave to introduce a new bill on the same subject, purporting to repeal ss. 38, 39, and 49 of the Constitution Act, 1792, and to declare null and void the various letters patent by which the former rectories had been established. By a vote of 43 to 8 this permission was refused.

There the matter lay until the 29th of August, 1851. On that day yet another petition was received by the House, this one from the Bishops of both Montréal and Toronto, naturally protesting against the bill. On the same day, Mr. Sauvageau took the chair of the Committee of the Whole and reported back to the House that the report of the Select Committee was found acceptable, and that the bill required no further amendments. Accordingly, it was engrossed to be read for the third time. It should be kept in mind that August 29th was a Friday, and that, although both Houses were to sit on the Saturday, August 30 was to be the last day of the session, circumstances most likely in the forefront of the minds of the Honourable Members present.

Mr. Mackenzie then began a long series of attempts to kill the bill by delaying it beyond the expiration of the sitting. He moved for adjournment nine times that day, and indicated his intentions to continue to obstruct the business of the House until the Rectories Act was defeated. After one particularly obnoxious motion had been overruled, Col. Prince rose to remark, with a delicious parliamentary bite, that "The Honourable Member for Haldimand is a man unfitted to sit in a deliberative assembly, but by what misfortune I do not know." When the bill was finally moved for Third Reading, Mackenzie, Hopkins, and Notman attempted a postponement, first until tomorrow, and, when that failed, "until a day three months hence,"

which was also defeated, 20 to 3. Finally, in a move of some desperation, the same three members moved to have all the operative paragraphs except the initial freedom of religion clause struck out. This, too, was thrown out. The bill was then carried for the third time, and sent up to the Legislative Council.

Mindful of the shortness of the time remaining to them, and having dispensed with standing order 46 especially for that purpose, the Council put the bill through all three readings in the space of half an hour, without any debate, and, as the Journal of the Legislative Council for 1851 shows, unanimously. Mr. John Fennings Taylor, one of the Masters in Chancery, reported back to the Assembly the next day, August 30, that the bill had been passed in Council.

The next step was, according to the provisions of the Constitution Act, 1840, discussed above, to send the bill to England where it had to be laid before both Houses of the Imperial Parliament before it could receive Royal Assent. A motion to this effect was placed before the Assembly, and again Mackenzie, Notman, and, this time, Mr. Smith of Durham, were in opposition. The motion then passing the Legislative Council, the Governor-General had no choice but to reserve the bill for the pleasure of Her Majesty. In fact, the Imperial Parliament did not give its approval, by motion, until May 15th of the following year, so it was not until June 9, 1852, that Royal Assent was proclaimed in the Canada Gazette, number 15, page 12708: "Now know ye, that the aforesaid bill...having been laid before Us in Council, on the Fifteenth day of May now last past, We have been pleased to assent to the same; and We do by these presents, and according to the provisions of the said Act of the Parliament of Great Britain and Ireland (i.e.,: the Constitution Act, 1840), Assent to the said Bill; of which all Our loving Subjects will take notice, and govern themselves accordingly." Thus, the Rectories Act became, not merely law, but an integral part of the constitution of the country.

The Rectories Act: Updated

Because of the delay in receiving Royal Assent, the Act was included in the published Statutes of the Province of Canada, 14 & 15 Vict.,1851, only as a supplement. It was therefore given its own title page, which indicated, among other things, that c. 175 of that year was a "reserved Act, to which the Royal Assent was subsequently promulgated by His Excellency James, Earl of Elgin and Kincardine, K.T., &c. &c. &c. Governor General." As originally published, the Act

consisted of three paragraphs containing four specific enactments and much preambulatory material. The rectories are provided for in second and third paragraphs, but to those interested in civil liberties, the operative paragraph is the first, "Whereas the recognition of legal equality among all Religious Denominations is an admitted principle of Colonial Legislation; And whereas in the state and condition of this Province, to which such a principle is peculiarly applicable, it is desirable that the same should receive the sanction of direct Legislative Authority, recognizing and declaring the same as a fundamental principle of our civil policy: Be it therefore declared and enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, An Act to re-unite the Province of Upper and Lower Canada and for the Government of Canada, and it is hereby declared and enacted by the authority of the same, That the free exercise and enjoyment of Religious Profession and Worship, without discrimination or preference, so as the same be not made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the Province, is by the constitution and laws of this Province allowed to all Her Majesty's subjects within the same."

The Act next appears in the Consolidation of 1859 as title 7, c. 74. Some minor reorganization and renumbering of the sections occurs, but does not in any way change the meaning or force of the law. Specifically, the marginal notations are altered, references are added, each enactment is given a separate paragraph, numbered as articles 1 through 4, and much of the preambulatory material is omitted. The wording of the provisions themselves, however, remains unchanged; article 1 now reads: "1. The free exercise and enjoyment of Religious Profession and Worship..." a formula which has not been altered in over one hundred years.

In 1867, Confederation occurred. By s. 129 of the Constitution Act, 1867 (30 & 31 Vict., c. 3, formerly called the British North America Act), all previous laws of the Province are continued in force "as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be repealed, abolished, or altered by the Parliament

of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act." By s. 92 (13), all matters relating to property and civil rights fall under provincial jurisdiction. As the Rectories Act, when passed, covered both Upper and Lower Canada, these provisions had the effect of creating two identical laws out of the one statute: one for Ontario, and one for Québec. The appendix to the later Revised Statutes of Canada, 1886, confirms that the Rectories Act was, by that time, a provincial matter.

In Ontario, the Act was adopted verbatim by the provincial Legislature and entered in the Revised Statutes of Ontario, 1877. This was done not only by virtue of the Constitution Act, 1867, s. 129, but also under ss. 2 and 3 of 40 Vict., c. 6 (Statutes of Ontario, 1877), authorizing the consolidation. The important article 1 of the Rectories Act was here reprinted as it appeared in the CSC 1859, and was repeated exactly in the subsequent consolidations of 1887 and 1897 as c. 236 and c. 306, respectively. Then it disappeared. The next revision contained only the laconic entry "not consol." in the official table of concordance appended as Schedule B to the Revised Statutes of Ontario, 1914. By ss. 2 & 3 of the enabling legislation, 3 & 4 Geo. V, c. 2 (Statutes of Ontario, 1914), however, acts which are not consolidated continue in force in their original form unless specifically amended or repealed.

Finally, in 1980, the Act reappeared in the Revised Statutes of Ontario as c. 447, and entitled the Religious Freedom Act. The preamble has been altered so that it now reads: "Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:-" but the precious article 1 remains intact. The remaining three articles, the ones dealing with rectories, the ones over which such a fuss was originally made, are missing. It may be supposed that, after one hundred and fifty years, the issues involved have, in the words of the older consolidations "become effete."

In Québec, a different curiosity developed. The Act was first provincially adopted, without any preambulatory material whatsoever, under the title "Rectories", as articles 3437 through 3442, Title IX, chapter 2nd, of the Revised Statutes of Québec, 1888. All the operative sections were reprinted unchanged, which is more than a little strange, as all the rectories with which the last three articles dealt had been established in Ontario! Nevertheless, in 1925, these last three articles are set out, by themselves, as the Rectories Act

in c. 200 of the Revised Statutes for that year, and the Act is further continued exactly as c. 310 of the Revised Statutes of Québec, 1941, long after the rectories in issue, and in Ontario, ceased to have any special legal status!

What of the Freedom of Religion clause? In 1925 it was included as s. 2 of the new Freedom of Worship Act of Québec, along with a number of other provisions to ensure, among other things, the solemnity of funerals, and the prohibition of disturbing or disrupting behaviour near a church. S.3 of the Act defines a 'church' as "any church, chapel, or other building or place used for public worship," a definition which clearly includes synagogues. This new law has been continued, with minor amendments and additions, but with s. 2 unchanged, through the various revisions to the present day. The latest consolidation has it as the Freedom of Worship Act, c. L-2 of the Revised Statutes of Québec, 1977. Here, the relevant article is s. 1, and it now reads: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, provided the same be not made an excuse for acts of licentiousness or a justification of practices inconsistent with the peace and safety of the Province, are by the constitution and laws of Québec allowed to all Her Majesty's subjects living within the same." S. 2 lists various acts not considered the free exercise or enjoyment of religion, but rather as acts "endangering the public peace and good order in Québec." The remainder of the present Act is concerned with public order in and near churches, and the application of penalties for the breach of such public order. Once again, 'church' is so defined as to include synagogues.

Thus it is that, from a concern over the unease a conquered Roman Catholic population must have had at the time of the Constitution Act, 1774, the guarantee of freedom of religious worship has been established, not merely under the ordinary laws of the provinces, but as an integral part of the constitution of both Ontario and Quebec.

(K.A.C)

OTHER PROVISIONS

The minor details of civic liberty we now take for granted came slowly and haphazardly to the citizens of the two Canadas. By way of example, we might single out the regulations concerning marriages and the holding of property by religious organizations.

Although the solemnization of marriage itself was traditionally left to the various religious authorities involved, the civil effects of marriage, notably the legitimacy of heirs, were important. Accordingly, the Government enacted several laws attempting to regulate the registration of marriage.

In Upper Canada, the first such act was 33 Geo. III, c.5. This law made valid marriages that had been entered into prior to 1793 which were in some doubt because the officiating person was not a Protestant minister. Further provision was made for future marriages to be solemnized "according to the form prescribed by the Church of England."

From 1798, by virtue of 38 Geo. III, c.4, the legitimacy of marriages solemnized by the Church of Scotland, Lutherans, or Calvinists was recognized. Even as late as 1830, the list of religions authorized to solemnize marriages in Upper Canada was limited to Protestant denominations. Under 11 Geo. IV, c. 36, s. 3, "it shall and may be lawful for any Clergyman or Minister of any church, society, congregation or religious community of persons, professing to be members of the Church of Scotland, Lutherans, Presbyterians, Congregationalists, Baptists, Independents, Methodists, Tunkers, or Moravians . . ." to solemnize a marriage in the Province.

Finally, in 1857, by virtue of 20 Vict. c. 66, the power to conduct legally recognized marriages was extended to all Clergymen or Ministers of any religious denomination whatsoever, provided that this Clergyman or Minister had been properly ordained according to the rites of the religion concerned.

In Lower Canada, the first statute to alter the priority of the Catholic Church was 35 Geo. III, c. 4 by which the right to celebrate marriages and to keep the registers was granted to "each parish church of the Roman catholic communion, and also . . . each of the protestant churches or congregations within this Province." This was extended to the Church of Scotland in 1827 by 7 Geo. IV, c. 4. No specific act gave this right to Jews, although the law of 1832 was thought to have this effect. Only in the Consolidations of 1861 was this expressly stated: in s. 17 of c. 20 the law declared the application of the privileges of marriage and registration to various religions named in the Act. Among these denominations, the fourth were the Jews, subject to the provisions of 9 Geo. IV, c. 75.

Since the time of Henry VIII, property could not be held by religious organizations without an express grant from the Crown. The purpose was to ensure that lands lay in the hands of individuals, where they could be taxed. Accordingly, the right of religious organizations to hold property, for whatever purpose required, was one that had to be specifically granted by legislation.

In Upper Canada, burial grounds were extended to Jews in 1850, by the act of 13 & 14 Vict., c. 177, which was assented to on the 10th of August, 1850. An Act to Permit Lands in Upper Canada to be Conveyed to Trustees for Burial Places declared: "Whereas in many parts of Upper Canada the inhabitants are desirous of securing the title of land requisite for a burying ground, which shall not belong exclusively to any of the various denominations of Christians, and that the same shall be taken and held by trustees acting in a corporate capacity and having perpetual succession."

This Act went on to state that whenever the inhabitants of any township or locality in Upper Canada, to the number of ten or more, desiring, they can take a conveyance of land for the above purposes and can appoint trustees and the land may be conveyed. This was limited to ten acres and it gave them the right to maintain and defend an action in Court. This Act would clearly give the right to Jews to hold land in perpetual succession and would obviate any of the conditions which obtained in Lower Canada in regard to cemeteries. (Brodey, Pp. 165-71)

Complete emancipation of the Jews in this regard, however, did not occur until 1890, when c. 74 of 53 Vict. was passed. Entitled An Act for the relief of persons professing the Jewish Religion, it provided simply that all the rights and privileges respecting religious property which were held by any religious society or congregation of Christians applied equally to Jews. These powers had been previously laid out in 36 Vict., c. 135.

EPILOGUE

The subsequent history of religious freedom and equality is a major them of Canadian federal and provincial legislative history, touching even basic constitutional issues. From such small beginnings have grown the whole range of laws demonstrating our wide libertarian aspirations. Today, every province has a Charter of Human Rights; each charter protects, among other things, the freedom of religion.

There is also a federal charter. Quite apart from the Canadian Bill of Rights (sometimes called the Diefenbaker Bill of Rights after its chief sponsor), the Canadian Human Rights Act was passed in 1977, as c. 33 of 24 & 25 Eliz. II, in order to establish the Human Rights Commission which is the enforcement body for the liberties protected by it.

Our Courts also have not been shy about ensuring these freedoms. In the 1953 case of Saumer v. City of Quebec, the Supreme Court of Canada, per Mr. Justice Rand, affirmed that: "religious freedom has, in our legal system, been recognized as a principle of fundamental character; and although we have nothing in the nature of an established church, that the untrammelled affirmations of religious belief and its propagation, personal or institutional, remain as of the greatest constitutional significance throughout the Dominion is unquestionable." ([1953] 2 SCR 299, at 327)

The culmination of all these efforts, of course, lies in the new Constitution Act, 1982, and in the new Charter of Rights and Freedoms which applies both federally and provincially, and affects all Canadians equally. Section 2 (a) now reads: "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion." It is much too early to speculate how this provision will be received, but it is to be hoped that the Courts will give it the widest possible interpretation in the future.

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