POLITICAL AND CIVIL STATUS OF THE JEWS IN CANADA

BY

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FOREWORD

This thesis is an introductory study to the subject of the Political and Civil Status of the Jews of Canada, as well as to the Relation of the Government to the Jews of Canada. In view of the limited time at the disposal of the writer, only Quebec and Ontario has been considered under the first heading, while under the second, Ontario and the City of Toronto. Even within these fields, much has been left undone, and many no doubt are the inaccuracies, for the processes of legal research are necessarily slow and unyielding. Extraneous matters of general interest are found in the appendix with the hope that they might prove useful to the future research worker in the field of Canadian Jewish History.

We have felt justified, in view of the fact that this is only preliminary survey, to repeat what has been said before; to recite and exhibit documents, etc. and cases at greater length than would ordinarily be the case so that the material, some of which is inaccessible, will be available for future work on this subject, and to acquaint the readers who may not fully be acquainted with Canadian Jewish History with fuller details. However, except by inadvertence, we have tried to acknowledge the secondary sources in footnotes and likewise the sources of original material.

There is one more statement necessary to make. The writer has allowed the documents and material to speak for themselves, as much as possible, and to only briefly indicate what appears, in the writer's opinion, to be the legal result, as a temporary conclusion for further consideration. This is especially because of the close relation between the law of the various Provinces and English law, except perhaps Statute Law. This is less true of Quebec where the Civil law is codified. It would be necessary, therefore, to complete the field within Canada before settled conclusions would be altogether safe.

Short Note on Canadian History.

Previous to the Conquest of Canada by the British, Canada was a French Colony under Royal administration, its history going back to Cartier's possession of Canada in 1534 - a succession of chartered companies, a system of paternalism starting with the advent of royal government in 1663.

Canada was conquered in 1759 when Quebec was taken, to be followed in 1760 by the capture of the remaining French possessions.

There was military rule from 1759 to 1763 when the terms of Capitulation were formally incorporated in the Peace of Paris, February 10th, 1763. By this treaty, all the French possessions in North America, except St. Pierre and Miquelon were ceded to Great Britain This was followed by the Royal Proclamation of Oct 7, 1763 giving Quebec its first civil government. Murray was appointed Governor in Chief in November 1763 over the Province of Quebec in America and civil government was actually established on August 10th, 1764.

The legal controversies as to what law was in force is outside the scope of this note, but suffice to say that the Quebec Act of 1774, extended the originally defined territory of Quebec to include what became Upper Canada and is now Ontario - and established French Civil law (the custom of Paris mostly), English Criminal law remaining as from the Proclamation of 1763. The Catholic religion was protected from the first"as far as the laws of England permit" (1) and this policy of toleration aroused Protestants, etc., even Jews, to protest against any consideration being paid to the Canadians (French).

1. Kennedy, Constitution of Canada, for an authoritative survey of Canadian Constitutional History.

The American revolution caused many loyalists to come to Canada, bringing with them a desire for representative institutions. They, of course, expected to find English law in force here, as French law was foreign to them.

The Constitutional Act of 1791 passed by the Imperial Parliament separated Quebec into Upper and Lower Canada, providing for representative government, a governor and Council, etc. Further details that affect our subject will be discussed later.

The Provinces led their separate existences until 1840 when by the Act of Union, the two Provinces became known and were united as"the Canadas" with one Parliament for the whole Province, the laws remaining as they were.

By 1867 the necessity for a united Canada including the Eastern and Western Colonies of Great Britain, arose and the desire for Federation took root. The British North America Act of 1867 provided the legal and constitutional machinery for the Dominion of Canada with Upper Canada (Ontario), Lower Canada, (Quebec), Nova Scotia and New Brunswick constituent parts. Later, the other British possessions in North America, namely, Prince Edward Island, Rupert's Land; the North west Territory, Manitoba, Alberta, Saskatchewan and British Columbia came into the Union/ This Act further regulated the powers of the Provinces and the Federal Government respectively, and provided for the legislative machinery for the whole Country.

Canada has grown to one of the important countries of the world, being the fifth largest trading nation in the world.

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BIBLIOGRAPHY

This is intended as a short note on the sources of Canadian Jewish History with special reference to the scope of this thesis.

A. Archives:--Original Sources.
The most important material is to be found at the Canadian Archives in Ottawa where the documents are readily accessible.

(a) : Series "Q" of the Dominion Archives is a series of transcripts of Colonial Office Correspondence giving the Imperial and Provincial Views on official State matters. These include Lower and Upper Canada and are the most important documents for the study of Canadian History from the earliest times. Also names and applicants for Crown Land. Mr. Sack has carefully gone over the published calendars of this series, many volumes, but we considered it necessary for certain periods of Jewish History to examine them again, especially all the volumes relating specifically to Upper Canada.

(b) : Series "G" -Dominion Archive Manuscripts. There are published calendars of these manuscripts in four volumes and this series contains some duplicate material to the "Q" Series. Otherwise valuable.

(c) : Upper Canada Sundries---Dominion Archives--miscellaneous matters for part of which there is an unpublished index.

(d) : Minutes of the Executive Council of Upper Canada. Land and State volumes. Very important for Crown land grants, transactions and regulations in Canada and for our purposes especially Upper Canada. Photostats up to 1841 are in the Ontario Archives. Those from 1787 up to 1798 have been published by the Ontario Archives. (See, Ontario Archive Reports,1928-31 inclusive).

(e) : Original Land Petitions---including Upper Canada on which the above transactions of the Council are based.

(f) : Internal Correspondence. "S" Series--Government Correspondence for which there is an index in the Dominion Archives for Lower Canada.--And other important material, including Diary of Samuel David,1800-1806, of Montreal.

B. Quebec Archives:
(a) ::There is very little material on Jewish questions. The Calendars of these manuscripts are contained in the Quebec Archives Reports and these are indexed. There are many old volumes of records not indexed but it is unnecessary to set them out here, old court and military records particularly.

(b) : The Legislative Library at Quebec has the original volumes of the Legislative Journals, besides a well equipped legal library. The old newspapers of Quebec can be found there.

(c) : The Quebec Court Archives are a mine of legal information for the City of Quebec and thereabouts but they are not well indexed. One must know the date and name of the transaction to find one's way among the many documents. Old Registry office records are filed there as well.

BIBLIOGRAPHY (continued)

(d) : The Laval University, Quebec, has many original manuscripts.

C. Three Rivers: We did not personally visit this important centre of early Jewish life. We were informed by letter that the Court Archives contained nothing of interest for Jewish History.

D. Montreal:--

(a) : Court Archives of great importance to legal historian. It is necessary to know the name and number of the case to find the original papers. According to the Archivist, there are no known documents for Jewish History except those which have been mentioned by us.

(b) : The St. Sulpice Library---extremely complete library for the history of Quebec, particularly the French period. There are only a few known documents referring to the Hart family and mostly commercial matters. Most of the original material in this library is not indexed yet. There is a large collection of Quebec newspapers and Reviews.

(c) : The Montreal Law Library Court House has a complete library of reported cases for Quebec, but no manuscripts.

(d) : The Montreal Municipal Library contains the Gagnon collection in which there are a few commercial letters regarding the Hart family.

(e) : The Montreal Historical Society--we have been informed have no material pertinent to Jewish History.

(f) : For more recent cases the files of the Jewish law offices are an important source.

(g) : McGill University Library--very fine for secondary material for Canadian History, but no documents of interest. Many old newspapers and reviews.

(h) : Jewish Community Archives.

E. Ontario:--

(a) : Ontario Archives at Toronto Parliament Buildings have many manuscripts but we have found few of interest to us. Their valuable Reports however have proved valuable especially the Journals of the House. Much of the materials on Upper Canada is in Ottawa. There are many volumes of early Provincial Court records including Toronto and they will gradually be published. The Reports of 1917 and the last report contain small parts of them.

(b) : The Ontario Legislative Library at Toronto has the Journals of the House and old newspapers.

(c) : Osgoode Hall Library of Toronto contains the reports, statutes, etc. important for our legal history. We have read the reported cases volume by volume till 1900, beginning with 1823, but as many names of Jews do not sound Jewish it is difficult to know whether or not any cases of Jewish interest were missed. By using the digests for the period and the Synagogue minute books we have tried to eliminate as much error as possible. We have found only a few cases of any interest outside of commercial matters (see notes), and we have examined the

BIBLIOGRAPHY (continued)

Statutes as well to date. (See Gurofski & Harris etal, 1896, 27 O.R.,p. 205).

(d) : Osgoode Hall Court Archives contain many Court records but not indexed except as to the year.

(e) : Records in Registry Office, Governmental Offices of Toronto and Province of Ontario, etc.

(f) : Holy Blossom Synagogue: Minutes from 1856 to date with the exception of from the fall of 1871 to about 1889. There are several account books and legal documents which we have perused. We have read the Minutes up to 1900. There are incomplete cemetery records.

(g) : University Avenue Synagogue Minutes. We have located these, but the early years (before 1904) are missing. Account books go back to about 1889.

F. Miscellaneous Publications:

(a) : Kennedy, W.P.M.--The Constitution of Canada, London, Oxford University Press,1922.

(b) : Kennedy, W.P.M.--Statutes, Treaties, Documents, etc. Canadian Constitutional History, Toronto,Oxford Press,1930, 2" Edition.

(c) : Doughty & McArthur--Documents of Constitutional History of Canada,1791-1918. (Dominion Archives)1914.

(d) : Short & Doughty--Documents of Constitutional History of Canada, Parts I-II,1759-1791,Ottawa,1918 (Canadian Archives).

(e) : Statutes & Reports of Canada,Ontario & Quebec.

(f) : Journals of The House--Ontario & Quebec Provinces.

(g) : Canadian, Ontario & Quebec Archives--Reports.

(h) : Illustrative Documents,1814-1821, edited by Brig. Gen. E.A.Cruikshank, contained in Ontario Historical Society Records, vol. 23.

(i) : Simcoe Papers--Ontario Historical Society.

(j) : Russell Papers--Ontario Historical Society.

(k) : Askin Papers--Burton Historical Society, Detroit.

(l) : Naturalization Records of the Department of State, Secretary of State, Ottawa.

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POLITICAL and Civil STATUS OF THE JEWS OF CANADA

1. ~~[illegible]~~

INTRODUCTORY:

Those writers who have attempted to speak of the political and civil rights of the Jews in Canada have failed to point out what is the fundamental and legal basis of these rights. In the very able and worthwhile study of the Jews of Canada, by Mr. B. G. Sack, the author points out that "Canada extended full political rights to the Jews more than a quarter of a century before Britain--but in Canada, just as in the Motherland, the whole question revolved around political and certain civil rights of Jews with regard to communal matters, they not being discriminated against in any other respects and having from the very outset the right of settling wherever they wished and of exercising all avocations as tradesmen or artisans." (1)

In an article by Mr. M. M. Sperber, K.C., "Legislation in Canada Affecting Jews" (2) the writer points out that under the British and civil rights of the Jews in Canada, that is to say, the right to contract and hold property, to transmit property by wall and otherwise, to sue in the courts, to be a witness, to contract marriage, etc. were never questioned; yet their political rights were not specifically confirmed until 1831 by the Act I. Wm. the 4th, Chapter 57."

In a recent book by the late A. Rhinewine "Looking Back a Century", the editor Isadore Goldstick says, (3) "Prior to 1808 the political and civil status of the Jews had not been called in question. On page 13, he states "that the act of 1832 swept away every

1. Sack,B.G: History of the Jews in Canada, published in the Jew in Canada,1926,p.25.

2. Jew in Canada, p.461.

3. Ibid,p. 11. - where?

vestage of Jewish legal disabilities and had a far reaching effect on the subsequent development and growth of Canadian Jewry." Without quoting any further it is pertinent to ask, from whence did these political and civil rights of the Jews arise? Every right, whether civil or political is based upon some law and it is only by pursuing these laws to their foundation that we can understand the nature of these rights and perhaps find that the "struggle" for political and civil emancipation in Canada resulted only in a formulation of legal and constitutional rights which had been established from the very foundation of the British settlement in Canada. We shall consider also the above statements in the light of documentary as well as legal evidence.

We will endeavour to show that the legal foundation of Jewish rights in Canada arose out of a process and policy which began in the year 1740 in England by an act known as 13 George 2nd, Chapter 7, an act for the Naturalisation of Protestants and others, and that this law and this policy was incorporated in the Constitution and life of Canada from the very beginning.

PART I.

QUEBEC

(LOWER CANADA)

CHAPTER I.
Political Status of Jews in Lower Canada.

In dealing with fundamental law it is necessary to point out that the laws of the English speaking provinces of Canada have their sanction from different sources.

There are three ways in which a colony or settlement may be acquired;

First - By occupancy;

Second - By conquest;

Third - By treaty or cession.

The laws that govern are determined by the mode in which it is acquired.

It is generally considered that Canada became a colony by conquest, which was later ratified by a treaty in 1763. The rule applied has been that except so far as modified by the treaty or cession, the power of the Crown to impose laws would be that in regard to a conquered colony, namely that the laws existing at the time of conquest are considered in force till altered by the sovereign, who can impose on the conquered such laws, British or otherwise, as he or any Legislative Council appointed by him may please. There is one exception to this power, namely The King is subordinate to his own authority in Parliament and cannot make any new change contrary to fundamental principles. (1). The rule in a ceded colony is the same except that the power of the Crown is modified by the sacred and inviolable terms of the treaty. (2).

When English law is introduced into a conquered colony, we find that the following rules govern; The English Common law is in force unless it is not applicable.

1. Leith's Blackstone, Commentary on Real Property, adapted to Ontario, Edition 1880, Ch. II, p. 16, foll. Campbell vs. Hall. Cowp. 208; Re Adem 1 Moo. P.C. 470; for excerpt, See Kennedy, Documents of Canadian History, 1930, p. 89.

2. Same as (1), Leith's, p. 23.

2. The Imperial Statutes of general application changing the Common Law is in force if passed before English law came into force in the Provinces.

3. If afterwards, then the Imperial Statutes have validity as a result only of legislation of the colonies itself.

4. Statutes expressed to apply in or by express words or necessary intendment to the Dominion or to the Colonies generally, whenever passed, become part of the law of the Colony. This was true until 1931 when the Statute of Westminster (1931) changed this. The tendency therefore has been till 1931 not to regard a statute as being in force unless it is applicable (1).

Previous to the Conquest of Canada by Britain in 1759, what is now the Province of Quebec was under French Law. In French Law aliens had no political rights because Kings were so sparing of their privileges that they very seldom granted naturalisation, which was done only as a reward for a very meritorious service or deed, and only by "letters du grand s ceau" called "lettres de nationalite" or lettres de Bourgeoisie; therefore no law on naturalisation or nationality is found in France up to the time of the cession of Canada to England in 1763.

After the cession, the inhabitants by the fact of the conquest became British subjects and were subjected in that respect to the Common Law of England by which every person born within the dominions of the Crown, no matter whether of English or foreign parents, and in the latter case whether the parents were settled or merely temporarily sojourning in the country, was an English subject, save only the children of foreign ambassadors or children

1. Finkelman, University of Toronto, article to be published. "Leith's Blackstone supra, Ch.II, an important chapter on the English Laws in force in Ontario."

born to a foreigner during the hostile occupation of any part of the territories of England. No effect appears to have been given to descent as a source of nationality. (1).

W. E. Davies in his Law Relating to Aliens (2)states that at Common law, subject to certain exceptions, British Nationality could only be acquired by birth within the ligeance of the King, meaning by Ligeance a place actually possessed by the King himself or some prince subject to him, and paying him homage.

F. T. Piggott in his authoratative work on Nationality, (3) states "the Common Law of England recognized as the test of English nationality, birth within the realm - jus soli - and not descent from English ancestors -jus sanguinis-. Every person born within the realm was a British subject and every person beyond the realm was an alien with but few exceptions (4).

The Common Law was modified and extended by certain statutes, viz: 25 Edward III statute: 7 Anne Cap 5: 4 George II, so that up to the time of the passing of the English Naturalization Act 1870, all persons born within the Dominions of the Crown with the exceptions above mentioned whether of British or foreign parents and any person being children or grand children of British parents born within the Dominions of a foreign state were considered by all extent and purposes British subjects owing allegiance to and being entitled to the protection of the Sovereign of the British Empire. Thus jus sanguinis was incorporated in the law (5). A Jew therefore born in Canada would be at common law a natural born British subject.

1. See, The Civil Code of Quebec, articles 19 & 20 confirming this law.
   Unpublished Memorandum by O. Coderre, Solicitor and Chief Naturalization officer for the Department of State Canada, on Naturalization in Lower Canada up to 1840.
2. Published 1931, pp. 107 and 253.
3. Published 1907, p. 41, part I.
4. Cf. Cockburn Nationality, p.7.
5. Coderre supra., Piggott, p. 219.

Place of publication

What acts of the British Parliament were in force in Canada after the cession in accordance with the above statement of the law affecting our subject? The Act of the British Parliament, 13 George II, Chater 7 provided (1) for the naturalization of foreign Protestants and others who have resided or shall reside seven years or more in any of His Majesties colonies in America and shall not have been absent more than two months at any one time during the said seven years, and shall take and subscribe the oaths and make, repeat and subscribe the declaration by 1st George 1st, Chapter 13, and make and subscribe the profession of Christian belief appointed by 1st of William and Mary, Chapter 13, before the Judge of the colony; and receive the sacrament in some Protestant Congregation in Great Britain or some of the said colonies in America/who shall be deemed natives, that is His Majesty's natural born subjects as if they and every one of them had been born within this kingdom. Jews taking the oaths may omit The Christian expression "on the true faith of a Christian" and they are exempt from taking the sacrament. It was further provided that no one so naturalized will be of the Privy Council or of either Houses of Parliament or enjoying any office or place of trust within the Kingdom of Great Britain or Ireland either civil or military or of taking grants from the Crown of any lands within the Kingdom of Great Britain or Ireland. It will be noted that no special Act of Parliament was necessary, merely the taking of an oath before a Judge, the payment of a fee and the applicant was granted a certificate of naturalization. As some doubts arose as to the meaning of this act the declaratory Act of 13 George III, Chapter 25, (1773) (2)explaining 13 George II was passed. Previously another act 2 George III, which was an act for the naturalization of such foreign protestants as served or shall serve as officers or soldiers in his Majesties Royal American Regiment, etc. had been passed.

1. See Appendix, p. 240 for copy of Act. This act was published in the American Jewish Historical Society Review, Vol. 1. page 93
2. See Appendix, p. 246 for copy of act.

The Act of 1773, after reciting the provisoes in both Acts, that no person who shall become a natural born subject of this Kingdom by virtue of the said acts shall therefore be able to be of the Privy Council, etc., further recited that whereas doubts may nevertheless arise whether such persons as have been or may be naturalized by virtue of the said acts are incapable of taking, having, or enjoying, any office or place of trust either civil or military or of taking any grants of land from the Crown whatsoever; It was declared that all and every person and persons that have become or shall become His Majesty's natural born subjects by virtue of the said acts or either of them, are and shall be deemed to be capable of taking or holding any office or place of trust either civil or military and of taking any land from the Crown as well under seal of Great Britain as otherwise, other then offices and places and grants of land within Great Britain and Ireland, any law or act of parliament to the contrary notwithstanding. It will be noted by the words underlined above that this act was merely declaratory of legal rights that had already been established and intended to be established from the very beginning, and so declared by the highest possible authority. The recital in this act clearly indicates the reason for its enactment, namely to encourage emigration into the Colonies and for the purposes of trade. (1).

It is important to note that in the Quebec Act 14 George III, Chapter 83, an Act for making more effectual provision for the Government of the Province of Quebec in North America in (1774), section 18 has an important bearing on the application of these mentioned acts in Canada. This section reads as follows: (2)

1. For the discussion and debates on the Act of 1740 in the British Parliament, see article, Naturalization under the Act of 1740, Dr.J.H.Hollander, Amer.Jew.Hist.Soc.,1897, vol. 5,p.105. As far as I know the Act of 1773 has not been published here.

2. Kennedy, Documents,1930, p. 140.

"provided always, and it is hereby enacted that nothing in this act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of Quebec any Act or Acts of the Parliament of Great Britain heretofore made for prohibiting,,restraining, or regulating the Trade or Commerce of his Majesties Colonies and Plantations in America, but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said Colonies or Plantations, shall be and are hereby declared to be, in Force, within the said Province of Quebec and every Part thereof."

It will be seen that while by the ordinary rules of law which I have stated before, the above British Naturalization acts would be enforced in Canada, as being intended for the Colonies, nevertheless this section of the Quebec Act makes it clear beyond any doubt that such was the case. This opinion is further substantiated by the opinion of Chief Justice Sir J. B. Robinson in Gardner vs. Gardner (1) which was a case decided in Upper Canada, but which is in point as well here. This case was in regard to statute 5 George II, Chapter 7, an act for the more easy recovery of debts in his Majesties Plantations and Colonies in America. This Act was passed before Canada was a British colony. The Act was not part of the general law of England, but local in its application.

Sir J. B. Robinson,in the above mentioned case, said: "The doubt that had been raised was whether the 5 George II was in force in this Province being a colony acquired by conquest since the passing of that statute, and the English Law having been introduced as the rule of decision by the colonial statute of 1792 (32 George III). It was decided that the statute was in force, if not otherwise, yet certainly under the 18th section of 14 George III Chapter 83.

The Constitutional Act 1791, 31 George III, which Chapter 31, is an Imperial Act dividing Canada into Lower and Upper Canada, contains provisions which are applicable to the political rights generally in both Canadas and also applicable to Jews. The following sections are important in this regard.

By the 22nd section it provides that no person shall be capable of voting at any election of a member to serve in such an assembly in either of the said Provinces, or of being elected at any such election who shall not be of the full age of 21 years, and a natural born subject of his Majesty or a subject of his Majesty naturalized by act of the British Parliament or a subject of his Majesty having become such by the conquest and cession of the Province of Canada.

Section 29 says "that no member either of the legislation or assembly shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath, either before the Governor or Lieutenant Governor of such provinces or person administering a governor or before some person or persons authorized by the said Governor or Lieutenant Governor or other person authorized to administer such oath and that the same shall be administered in the English or French language, as the case may be required. (1).

I, do sincerely promise and swear that I will be faithful to his Majesty, King George, as lawful Sovereign of the Kingdom of Great Britain, and of these Provinces dependent on and belonging to the said Kingdom: and that I will defend him to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against his person, crown, and dignity; and that I

1. Kennedy, Documents, supra, p. 199.

will do my utmost to endeavour to disclose and make known to his Majesty, his heirs or successors, all treasons and 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 whatever to the contrary -- So help me God."

Section 42 of the same act provides that when any Act or Acts so passed shall contain any provision which shall in any manner relate to or affect the enjoyment or exercise of any religious forms or mode of worship, or shall impose or create any penalties , burthens or disqualifications in respect of the same, every such act or acts shall, previous to any declaration or signification of the King's assent therefore, be laid before both Houses of the Parliament of Great Britain.

It would seem that up to the present time, from a legal point of view, a Jew naturalized under the above mentioned British acts or born in Canada because of the common law doctrine would have all the political rights of any other British subject without question, and this was further confirmed and guaranteed by the Constitutional Act of the British Parliament and incorporated into the laws of Canada.

While the law as stated above seems clear, yet doubt might have been thrown upon the capacity of Jews to hold offices, etc. by virtue of the oaths which from the beginning seemed to be in force here until 1850 (1).

Henriques, in "The Jews and the English Law" discusses the history of these oaths as they applied in England. (2). These oaths were the oath of supremacy, allegiance, abjuration and declaration against transubstantiation, and I append a copy of them as administered in

1. 13 & 14 Victoria, chap.18 (1850) assented to 24 July 1850 and Act of the United Canada reenacts provision of the Upper Canada Act 3 Wm.IV (1833), Ch.12 to render oaths unnecessary, for whole Province (see p.165).
2. [illegible] and the English Law, p.221.foll.

Upper Canada by the members of the Executive Council and officials on July 7th, 1792 (1). They are evidently the ones in force in Lower Canada.

A Jew would be able to take all these oaths except that of abjuration which ended with the words "on the true faith of a Christian".

The instructions to the various Governors of Quebec up to 1791 provided for these oaths to be administered to the Governor, his Council and to members of the proposed assembly, also to the inhabitants who were to be summoned to take the oath of allegiance and make and subscribe the declaration of abjuation or else depart. Similarly to persons belonging to the Courts, to judges, justices of the peace, sheriffs and other officers of justice, together with the usual oaths for performance of offices.(2).

Roman Catholics were excepted from these oaths by the Quebec Act, and a special oath as provided (3). It was contended before the Act passed that Catholics could not have taken the oathse against the power of the Pope and the Oath of Supremacy (4).

It was pointed out by Maseres moreover in his report to the Governor General in 1769 (5) as attorney general, that it appeared that English laws were in force here because among other things the settlers were promised by royal Proclamation of 1763 the immediate enjoyment of the benefit of the laws of England, and by other acts of the Government, such as the allusion in the Commission of Murray to the Laws of England as being

1. See, p. 237: Ontario Archives Reports 1929,Appendix III,p.180.
2. See, Instructions to Murray,28 Nov.1763 & 7 Dec.1763, Constitutional Documents,Short & Doughty,Pt.I,p.174 & 191. Instructions to Carleton 1768--ibid. p. 310.
3. Quebec Act, supra, sec. 7.
4. Marriot, Plan for Code of Quebec. Const.,Doc.,supra,Pt.I,p.445.
5. Kennedy, Documents (1930), p. 79.

Not necessary to repeat titles of book quoted once

in force here, particularly the laws relating to the oaths of abjuration and supremacy, and the declaration against transubstantiation.

The Quebec Act which excepts Catholics thus recognizes that these oaths were in force for others.

The later instructions to the various Governors up to 1791 contained provisions for administering the oaths especially in those to Dorchester as Governor of Lower and Upper Canada in 1791 (1). They were to be given to him and his Council, to those belonging to the Courts; to Justices and Officers administering laws, etc., and in the instructions to him as Governor of Lower Canada in September 1791 (2) besides the above, section 3 reads:

"You shall also administer or cause to be administered the oaths appointed in the aforesaid recited Acts to all persons except as hereafter mentioned (i.e. Catholics) that shall be appointed to hold or exercise any office, Place of Trust or Profit in our said province previous to their entering on the Execution of the Duties of such office; and you shall also cause them to make and subscribe the Declaration mentioned in the aforesaid Acts of the Twenty-fifth year of the Reign of King Charles the Second -----".

These instructions, coming as they do af ter the Constitutional Act, throw some doubt on the right to hold office, but cannot, it seems, clearly be considered applicable to sitting in Parliament because the Constitutional Act provided the oath that the members were to take.

1. Documents of Constit. Hist. of Can.,1791-1818, ed. Doughty & McArthur, p. 5, foll. s.

2. Ibid,p. 13, foll. s.

Moreover, it might be argued that these oaths generally were not intended to be applied to Jews or Quakers because an express enactment of 1740 (and later confirmed in 1773) absolved Jews from the forbidding words "on the true faith of a Christian".

The Act was for naturalized Jews, all the more so for natural born Jews, who were subject to the Common Law. The Common Law of England as to oaths would be inapplicable in the colonies to Jews as repugnant to the policy if not law under the act of 1740, and therefore inapplicable to the state and condition of the province (1) and not in force here. This would not prevent the Acts as to oaths being in force in regard to other inhabitants. (2).

The Criminal Law of England came into force by the Proclomation of 1763 and was confirmed by the Quebec Act in 1774, thus bringing into Quebec the Common and Statute Law of England in regard to criminal matters, including the question of qualification of Justices of the Peace by taking the necessary oaths. What we have said above applies with equal force here as well and much discussion revolved around the disability of Jews to qualify as Justices of the Peace (3).

These fundamental rights were questioned nevertheless from the very beginning of the division of Upper and Lower Canada, and we shall consider historically as well as juridically this development.

1. Compare Chapter on Political Rights in Upper Canada. See discussion on this point in the report & hearings of a Special Committee 1834, Lower Canada Assembly. See, Appendix, p.292, foll. C.
   See, Leith's Blackstone, Ch. II, supra.

2. See, p. 155.

3. See, p. 39, foll. 9; see Appendix, p. 293, foll. H.

The Naturalization Act of 1740, 13 George II, Chapter 7, had been acted upon in the United States of America previous to the Declaration of Independence, and many Jews and Protestants had been naturalized there as late as 1766 (1).

Dr. Felsenthal of Chicago, in a letter to Judge Charles B. Daly of New York, on September 12th, 1883, gave it as his opinion that this act so strangely overlooked by all historians of Judiasm, though it is probably the first legislative enactment in all Christendom in favor of Jewish 'emancipation', in favour of granting perfect equality before the laws to the confessors of the Jewish faith-left nothing to be desired by the Jews in the American colonies in regard to their juridical and political status. The letter states that while the Jews in the colonies were admitted to full citizenship, already in 1740, yet in some of the states they were excluded from the enjoyment of rights of citizenship and gives several examples (2).

The first discussion of the act of 1740 in Canada arose as a result of a considerable immigration to Quebec after 1763 of Europeans born without the Dominions of Great Britain, including Jews. In most cases, however, French Officers . The Act of 1740 had a considerable bearing on their status in Lower Canada. These citizens petitioned Lieut-Governor Clarke in March 1792 asking that the doubts regarding their rights be removed.

In a letter from Alured Clarke, Lieutenant-Governor of Quebec to Rt. Hon. D. Henry Dundas (3) he states that he was enclosing "Copy of Memorial presented

1. Naturalization of Jews under Act of 1740,p.103 by Hollander, ref. not clear supra.
2. Settlement of the Jews of North America--Daly, edited by Kohler,p. 154.
3. Canadian Archives, Q. series 58,pt.I, Clarke to Dundas,March 10,1792. #25.
   See, Documents of Canadian History 1791-1818,supra,p.107 for a short note on the question of Naturalization, refers briefly to this & foll. 8 documents.

by a number of inhabitants of this town, stating doubts of their capacity to be elected and of voting for members of the House of Assembly and soliciting the interference of Government to remove their doubts, and to prevent the inconveniences that may arise therefrom."

"The subscribers are many of them respectable tradesmen and the character of all of them as good subjects stand unimpeached," and transmits the same for the consideration and determination of his Majesty's Ministers" as the petitioners are extremely anxious that it should be ascertained how far they may be entitled to participate the rights and privileges extended to their fellow citizens."

This was a Memorial to Alured Clarke, Lieutenant-governor of citizens for their name and on behalf of themselves and others of a similar description, and was dated Quebec, March 3rd, 1792. The Petition recited that they were natives of Europe born without the Dominions of Great Britain. It mentioned the Proclamation of October 7th, 1763, securing inhabitants residing in or resorting to the new Colony of Quebec, the enjoyment and the benefit of the Laws of England, and that several of the memorialists wishing to avail themselves of the Benefits of the said Proclomation did resort to and have resided in the Province for many years, that they were dutiful and loyal subjects; that they were "informed doubts have arisen whether under the clause of the new Constitution natives of Europe born without the Dominions of his Britannic Majesty who have resorted, and settled in this Province since the Conquest and Cession of it, are capable of voting at an

election of a member to serve in the Assembly, or of being elected at any such election."

That the number of citizens in the Province falling within the description of 22nd clause of the Act of the British Parliament (1) and in the same situation with your memorialists is considerable, and your memorialists are apprehensive that if the doubts which have arisen and been circulated be well founded, they will be deprived of the rights of Citizens, namely the right of electing, or, of being elected, to serve in the Assembly.

"That your memorialists are induced to believe the British Parliament is too just and wise to deprive a very numerous description of laborious - - - - etc. subjects of the rights of citizenship, and that though your memorialists and others who reside in the Province under a similar situation are not expressly mentioned or named in the said 22nd clause, yet they humbly hope and believe that the King and Parliament of Great Britain did mean and intend that residents of the Province from whatever country or climate, possessing the qualifications as enacted in the 20th clause and falling under the Exceptions of the 21st clause of the British Act, should enjoy all the rights and privileges of natural born subjects of His Majesty by naturalization or by Conquest and Cession."

That such reasonable hope of your memorialists is founded on the known and invariable justice of the British Legislature and on the Statute of Parliament passed in the 13th year of the Reign of His late Majesty

1. Constitutional Act, 1791. where found?

George II, Chapter 7th, section 12, which enacts "That Foreigners who have resided, or shall reside, seven years or more in any of His Majesty's Colonies in America, and shall not have been absent for more than two months at any one time during the said seven years, and shall take and subscribe the Declaration appointed by 1st George 1st, Chapter 13, and make and subscribe the Profession of the Christian belief appointed by 1st of William and Mary, Chapter 13th before a Judge of the Colony and receive the sacrament in some Protestant Congregation in Great Britain or some of the said Colonies in America shall be deemed His Majesty's natural born subjects to all intents".

That your memorialists have taken and subscribed the oaths; and have made repeated and subscribed the declaration of Profession, and otherwise conformed with the Provisions required in the said statute of 13th George 2nd, or are ready to do so."

That your memorialists having resorted to the colony since the Kings Proclamation of 1763 - Do humbly deem themselves and others in a similar situation by the said statute of the 13th year of the Reign of his late Majesty George 2nd entitled to enjoy all the privileges of His Majesty's natural born subjects in common with the rest of their fellow citizens to all intents, etc.---".

Memorialists stated that to prevent confusion and doubt at the first general election due to the fact that the 22nd clause of new Constitution was not sufficiently explicit with respect to aliens, asked that doubts be solved and to declare their capacity or incapacity to vote, or to be voted, and it was signed by the following:

Frederick Petry	George Jenkins	John Henry Fress
John Krapper	Godfrey King	Josias Wurtle
Louis Kaechlein	Frances Vogeler	JohnRemhart
Henry Kuhne	John Rudolf Smith	Jonathan Eckart
Gottfried Hoffman	A. F. Kuhn	Phillip Brown
Elias Pleich	Frederick Klockemayer	
George Becke	H. Salze	John Albrecht
John Kilbury	Adam Hoffman	Jacob Kimerlein
John Dollman	John Spatz	
J. B. Loffart	Christian Cretschman	
Alexander Minnit	Albrecht Kling	
John Saul	Cynac Weissfried	
John Renard	Frederick Schilliman	
Enge Weise	John Effland	
John Henry Reinhart		
Elias Solomon	G. S. Baron De Reitzenstem	
August Welling	James Cuchod	
Jacob Walter	Henry Ranpschneider	
Christian Rapp. (1)		

Elias Solomon, one of the Petitioners, was a Jew who came to Quebec in 1884 (2).

The English law officers reported on this memorial, as appears from the following document dated July 6th, 1792, at request of Dundas, Colonial Secretary.(3) The report of His Majesty's advocate Attorney and Solicitor-General upon this memorial is as follows, viz: ----

"And we must humbly certify to your Majesty that we are of opinion, that Persons born out of your Majesty's Ligience who have been naturalized by any special act of the British Parliament, or who come within

1. The Memorial and the above names are in Canadian Archives, Q. Series 58,pt. I--see note (3) on page 14.
2. See, Seek, jew in Canada,p.51, but compare supre,p.61, when one Elias Solomon applied for a liquor license in 1775. If this is the same party then he would have lived in Quebec in 1775.
3. Can. Archives Q.Series,58,pt.I,p. 238.

the act of the 13th of His late Majesty, Chapter 7 for naturalizing foreigners generally in your Majesty's colonies in America, upon the terms and conditions therein expressed and that foreigners who were resident in Canada at the time of the Conquest and Cession thereof and as such were included in the Capitulation, are capable of voting for, or being elected members of the assembly of Lower Canada, and that foreigners who do not fall within one or the other of those descriptions are not capable of voting for, or being elected members of the assembly in that Province." This was communicated to the Board by his Excellency.

In a letter from J. Monk, Attorney General of Lower Canada, dated November 9th, 1792 to Lieutenant Governor Clark in regard to doubts respecting qualifications of certain members of His Majesty's Council and House of Assembly, he quoted the Constitutional Act, that no one shall be summoned to Legislative Council or vote, or be elected to the Assembly who shall not be a subject of His Majesty --------having become such by the conquest or cession of Canada. After discussing the terms of the Capitulation of September, 1760, the Treaty of Peace February 1763 and the effect of the clause above mentioned on French officers, etc. he continued:

"And the circumstances of each case may vary the rights of the claimant, and that those are cases applicable to Roman Catholics who were not born natural subjects of His Majesty and who are not within the benefit of the Statute of Naturalization for the American Colonies of

Great Britain" and enclosed a list of those said not to be qualified under 31 George 3, Chapter 31, in Legislative Council Assembly, mostly French officers who retired to France after Conquest in 1760 then returned to Canada about 1766. (1)

In a letter from Monk to Evan Nepean, Esq. (2) Monk, the Attorney General wrote that after opinions of the Law officers of the Crown in July last were made public touching qualification under Canada Act, the question was raised as to Legality of appointments by the Crown of members of Council and election of Members of Assembly under the 4th and 22nd Sections of the Act, and he discussed the part in regard to subjects by Conquest and Cession especially French Officers whom he didn't consider qualified under the Act.

He thought that a new act would remedy the hardship that might be complained of by the Canadian and would relieve the Foreign Roman Catholics settled there, and ~~that~~ those who might have come under the same policy, that promoted such settlement in our other colonies by Protestants through the Naturalization Acts.

The agistation evidently died down and only one person, namely Monsieur de laValtrie was objected to. (3).

It would seem very clear from the foregoing documents that any one naturalized under the Act of 1740 had the right to vote and sit in Parliament, confirming the opinion expressed by us above. These documents are only in part referred to in the documents of the constitutional History of Canada, 1791 and 1818 by Doughty and McArthur, Page 107, but I have quoted them here more fully, particularly the names of the citizens involved. The opinion of the

1. Can. Archives, Monk to Clark, Q Series 61-2,p. 444.
2. Ibid, p. 468.
3. Ibid, Q. 63, pt. II, p. 307.

Crown officers, especially was referred to, though not quoted supporting the argument in favor of the right of a Jew to sit in Parliament in the struggle that ensued in 1808 and 1809.

I have been unable to find to date, though I have searched in Ottawa for a record of the naturalization of Elias Solomon, or any other Jews under the Act of 1740. By searching in some of the old naturalization books at present in the custody of the Registrar's office in the Department of the Secretary of State, Ottawa, I found an ex parte petition in the Kings Bench of Lower Canada in 1830 by William Lampson of Quebec to obtain the benefit of naturalization under the provision of 13 George II, Chapter 7. The proceedings in this petition, except for the evidence taken, set out that Mr. Lampson, one of the reformed Protestant congregation, complied with all the requirements of the above Act and took the oaths and sacrament required. The oaths are recited as well. This petition was granted by the Judge so that Mr. Lampson was deemed a natural born subject under the Act. (1).

The question of Jewish political rights was brought to the fore during the years 1807 and 1809. Ezekiel Hart who was born in Three Rivers in 1770 (died 1843) was elected to the Legislative Assembly for the District of Three Rivers. This struggle for the recognition of the right of a Jew to sit in Parliament has been carefully treated in the various articles mentioned in the notes, and were it not for the purpose of making this record more or less complete, I would not retrace again the incidents so well narrated by others before me, especially by Mr. Tasse, whom I have followed closely. (2).

1. Register of Naturalization, Lower Canada, p.1, certified true copy of Proceedings in Registrar's office at Quebec, 27 Nov. 1830.
2. See, Bibliography; especially, Tassé, (Revue Canadienne), Sack, (Jew in Canada). Rhinewine, who publishes the Journal records also Price in the Pub.A.J.H.S; Sperber, (Jew in Canada), all of which form the basis of this account unless otherwise indicated. The original Journals have also been compared.

Mr. Ezekiel Hart, who is the son of Aaron Hart, the latter having come over with General Haldimand in 1759 as an Officer in the British Army, and being a native of England, was elected in Three Rivers to the legislative Assembly in 1807, due to the fact that the Hon. M. Lees, the then member died. It was necessary therefore to have a new election and Mr. Hart ran against Mr. Thomas Koffin and Mr. Mathew Bell. All these men were important members of the community even as Mr. Hart was one of the outstanding merchants, noted for his character, honesty and enjoying the esteem of all the citizens. It appears that Mr. Coffin was not adverse to stirring racial hatred and denouncing Mr. Hart as a Jew (1). Mr. Hart arrived in Quebec on the 16th of April just when the prorogation of the assembly took place and he was therefore unable to occupy the seat. Mr. Hart, it seems, belonged to the English party who desired to control legislation, but who were opposed by the French majority. It is interesting to note that it was the French element who elected Mr. Hart in Three Rivers for there were not many English persons living in Three Rivers. This struggle between the French and English had been going on ever since the conquest of Canada by the Britains and continued to be one of the vital struggles in the history of Lower Canada. It was no more than natural that the French majority took advantage of the opportunity of keeping out one more vote against them even if it were necessary to raise the racial issue. As Mr. Joseph Tasse in his very able article mentioned above puts it: (2)

> It is not surprising that in the midst of the excitement of battle, they had obeyed their passions and had wished to seize the occasion to humiliate their adversaries in expelling one of them. They accomplished thus an act of reprisal and at the same time caused to disappear from the scene a man whose vote would have been always against them.

1. Sack, Jew in Canada, p. 25.
2. P. 409 & 410, Revuew Canadienne, 1870, vol. 7.

In other circumstances, it does not seem probable that the members would have been determined to desire to eliminate Mr. Hart because he was a Jew, any more than they would have attempted to expel the Judges Bonne & Foucher if they had remained faithful to the national party. (1)

On the 15th of June, 1808, Mr. Hart applied for his seat in the House, after having taken the oath of office, according to the Jewish custom, that is on the Old Testament with his head covered.

When the House opened on the 29th of January, 1808, the House was informed in response to a query from one of the members that he had taken the oath in the manner above described. It seems, however, that the French members contended that this oath was not recognized by the constitution and that a Jew could not take the oath on the Holy Evangels, nor swear "on the true faith of Christians" and therefore could not comply with the law and was ineligible for Parliament. This was the beginning of a long struggle which centred about the question of not only the right of a Jew to take the necessary oaths, but of the right of a Jew to sit in Parliament regardless of the question of oaths.

On the 1st of February, it was resolved:

"That Ezekiel Hart, Esquire returned to represent the borough of Three Rivers had not taken the Oath in the customary manner", and it was "Ordered that the Clerk assistant of this House do furnish the said Ezekiel Hart with a copy of the next-preceding resolution, to the end that he may thereupon pursue such further course in the premises that the Law of Parliament may be found to require."

1. Cf. Canada From Barbarism to Wealth by Charles Roger, 1856, p. 121 suggesting that a Christian Assembly as in Canada (Quebec) could not be contaminated with the presence of a Jew--referring to Hart episode.

On February 9th, Thomas Coffin, an adversary of Mr. Hart's, presented a petition to the House stating that he was a candidate for the last election together with Mathew Bell and Ezekiel Hart, and he represented that Ezekiel Hart was of the Jewish religion and was therefore not capable of being elected to serve in the House of Assembly, or of taking the oath required from all sitting or voting in the Assembly, and demanded that he be considered as having the next largest number of votes, the duly elected member from Three Rivers.

However, on February 12th, 1808, Mr. Hart represented a petition to the House setting forth that to his deep regret "A resolve of this House has been communicated to him expressive of the petitioner not having taken the oath in the customary manner".

That on the 29th of January last, he duly did take the oath as described by statute 31st by his present Majesty, Chapter 31st, section 29, to qualify the petitioner to a seat in this House.

That the said oath was administered to the petitioner in a lawful manner as directed by his Majesty's Commissioners, and that the petitioner regards the said oath on his part legal and sacred to every purpose whatsoever.

That however sensible he is that he has taken the oath according to the true meaning of the constitutional law of this Province, yet he will not object to having the same re-administered to him in the usual form.

The petitioner therefore humbly solicits that the house will be pleased to admit the petitioner to take

a seat accordingly. (1).

On February 11th, the Legislative Assembly resolved itself into a Committee of the whole and it was resolved by the Committee that an enquiry be made to establish the reasons why M. Hart did not take the oath in the customary manner.

On the 15th and 16th of February the Assembly sat in Committee on the petition of Mr. Hart, and on the 17th of February a resolution was adopted that the manner in which E. Hart took the said oath is that practised in the Courts of Justice, when oaths are administered to persons professing the Jewish religion (2). They decided then to receive opinions from members in regards to their knowledge of the religious profession of E. Hart, and Mr. Muir and Mr. Mondelet both informed the House that Mr. Hart personally told them that he was brought up in the Jewish religion and still professed it, and this since Mr. Hart has asked to be permitted to take a seat and since he took the oath. The Hon. Mr. Justice Foucher informed the House that to his certain knowledge Mr. Hart is a professed Jew; that he has attained this knowledge having known him to be a Jew from the beginning of the year 1803; that he, Mr. Hart, follows the Jewish customs, and that in the Courts of Justice he never took the oath, but in the form in which it is taken by Jews: He particularly knows the said Mr. Hart to be a Jew as he has lately, in person, pleaded before him for certain privileges to which he considered he had a right, to wit: that of not being summoned to appear in the Courts of Justice on Saturday, it being his Sabbath and that of the Jews.

It was resolved that Mr. Hart was of the Jewish

1. Jew in Canada, p.26, Sack-Rhinewine, Looking Back a Century, p. 33; Tassé, supra; Journals of Assembly, 1808, p. 77.
2. Sack, p. 26; Journals of the House, p. 121; Rhinewine, p. 38.

profession of Religion and also that Mr. Hart was to appear on the next Friday on the legality of his pretentions to take a seat in the House, and of his having taken the oath in the manner customary only for persons of that persuasion. On the appointed day, Mr. Hart was heard at the Bar of the House and the Assembly resolved that on the 20th of February it would resolve itself into a committee of the whole house to further consider Mr. Hart's petition.

On February 20th a resolution was passed by the Committee of the whole, as follows:

> "RESOLVED that it is the opinion of this Committee that Ezekiel Hart, Esq., professing the Jewish religion cannot take a seat, nor sit, nor vote, in this House".

This was adopted by the Chamber by a vote of 21 to 5.

Evidently the English minority made a great protest against this resolution () which declares that no Jew in Lower Canada could sit in the Legislative Assembly as representative of the people, but it was of no avail. A struggle ensued between the friends of Mr. Hart and those who were with the French majority, namely, the Attorney-General and Bedard, the latter a famous patriot and owner of the newspaper Le Canadienne. Mr. Justice Foucher had opposed Mr. Hart from the beginning and was one of the most active in his expulsion. Mr. Muir, however, combatted the expulsion and the opposition of Mr. Foucher, claiming that it was not loyal to make war in the Assembly on one, whom he had fought in his election.

The Attorney-General depended principally on the fact that Jews could not take the necessary oath

of office on the Evangels. He admitted, however, that the Jews could take the oath in the Courts of Justice on the Old Testament, the same way that others had taken the oath in the form of their own religion, but that this was an act of necessity while it was not necessary that a Jew sit in Parliament. Mr. Richardson, defending Mr. Hart, maintained that in view of the statute 13, 13 George II,,Chapter 7 Jews had all the privileges of subjects born in the colonies of America and that this statute permitted them to make the oath of allegiance in the manner that they might omit the words, "on the faith of a Christian" which was found at the end of the ordinary formula of the oath (1). To the question whether a Jew could sit in Parliament, it was resolved affirmatively since the above statute, which gave to the Jews all the privileges of naturalized subjects of his Majesty, except the right to sit in the Privy Council of the Queen, in the English Parliament and of being nominated to civil or military offices, or receiving grants of lands in the Royal Kingdom, and he mentioned that the Crown Officers of England had declared that all persons within the allegiance of his Majesty or naturalized a special act of the British Parliament or in virtue of the statute of George II ; had the right to vote and be elected members of the Canadian Parliament (2). This law was confirmed later by a statute decreeing that the individuals thus naturalized were eligible to all civil and military offices and could obtain grants of land from the Crown in the British Dominions, except the Royal

1. See, Appendix,p. 239, for oath of abjuration.
2. See, pp. 18 & 19 for opinion of Law officers.

United Kingdom, and therefore he believed that it was natural and logical that a Jew born a natural subject must have at least as much right as another person of Jewish origin who had been naturalized and inferred that the Jews were eligible to the House.

This opinion was suppored by Mr. Muir and Ross Cuthbert saying that it was necessary not to be guided by the prejudices against the Jews and that one must give a true legal solution to the question.

The Attorney-General supported his contentions from the Canon Law approved by the English Laws declaring that the oath must be made on the Holy Evangels. He stated that the statute, 13 George II had been modified by a later law, 6 George III, Chapter 53 declaring that all those who occupy public offices must take the oath in question and no later act had been passed to authorize the Jews to take the oath in their own way, and therefore they could not fill public offices or sit in the house.

There follows then a legal argument by Mr. Bedard which appeared in the La Canadienne in the 2nd of March, 1808, which is fully quoted in the Review Canadienne (Page 413 and following). The substance of his argument was that the Jews could not be admitted to sit in the Assembly in spite of the statute cited in their favor and he relied upon the following words of the statute 13 George 11, namely that those who shall have resided in the colonies of America 7 years, etc. shall be deemed, adjudged and taken to be his Majesties natural born subjects of this Kingdom to all intents, constructions and

purposes, as if they or any of them had been or were born within this Kingdom. On these words, he claimed, depended the proper interpretation and he considered these words to mean that the Jews born in the Kingdom or naturalized by this statute only had the privileges of the Jews born in the United Kingdom, that is to say the same privileges they would have had if they were born within the Kingdom and he supported this by a passage by Blackstone as follows:-

All Protestants and Jewish foreigners after a residence of seven years in the colonies of America may be naturalized to all intents and purpose as if they had been born in this Kingdom and that is why they are admitted to all the privileges to which the Protestants or Jews born in this Kingdom have the right. As to what these privileges in relation to the Jews are in particular, this has been a subject of great debate at the time of the famous Jew Bill.

Mr. Bedard then asked the question, "What are the privileges of the Jews born in the Kingdom?" and how was it possible that the statute put naturalized Jews in a better condition then the same Jews born in the Kingdom and was firm in his conviction that Jews born in the Dominions of his Majesty could not have been admitted to sit in the Parliament of this Province, nor any Parliament dependent on the British Empire. He argued that the Jews had been banished from England, that they had never enjoyed the rights of citizenship, and had always been regarded as the property of the King, who had the right of imprisoning them and of selling them; that they had been recalled by Cromwell and that they had been given no new privileges, having lived at the discretion of the King

and that they had tried once to be put on a more advantageous position by an Act of Parliament, but that it had only lasted a few months; that their status has not been any higher then in the other Christian countries who had not accorded them the right of citizenship and it was no injustice to them because they did not wish to become citizens of any country, etc. He concluded that a Jew born in the Kingdom could not have the right to sit in Parliament in Dominions of his Majesty and that the Jews naturalized by the Act of Parliament could not have more rights. He goes on to state that the person in question here (Mr. Hart) was a Jew born in the Dominion of his Majesty and had no need to resort to the statute which would be inapplicable to this case. Mr. Bedard said that the Honourable members that lean upon the statute, in favour of the Jews born in the Dominions of his Majesty, had the argument that if the Jews naturalized had the right in question, all the more reason the Jews who were natural born subjects must have the right. Mr. Bedard contended you could not base these arguments on a statute which referred only to naturalized subjects; that certainly a Jew that was naturalized had no more right than a Jew born in the Dominions of his Majesty, and that therefore this statute could not have given more advantage to the Naturalized then if they had been born in the Dominions of his Majesty.

Messrs. Richardson, Muir, Cuthbert, took up the cudgels for Mr. Hart. Mr. Richardson considered Mr. Bedard's argument a mere sophism which would lead only to the conclusion that the rights of the natural born Jews would have been reduced to nothing. This was contrary to the interpretation given by the Crown officers; he contended a Jew born in the Dominions of his Majesty was a natural

born subject as all other subjects, that it was the right of all his Majesty's natural born subjects to be elected members of the Assembly. The three of them showed that the Statute 13, George III, Chapter 25, interpreted the staute the 13 George II, Chapter 7, declaring that the Jews as well as all others had a right to possess all offices, civil and military and could sit in Parliament.

The opposition contended that the words "Civil and Military office and Places" merely meant the ordinary offices and places granted by the Crown, but it was not intended that the Parliament of Great Britain would have appointed Jews to make laws for the Christians, and these words could only be interpreted in their ordinary sense, and not having regard to the places in the Legislature. This, they contended, was clearly indicated by the clause of exception in the statute 12 William III, Chapter 2, that was inserted in all the bills of naturalization, and which, besides the expressions of "places and civile militaires" in the Kingdom, contains the exception of places in Parliament. This was indicated by the statute of 13 George III, Chapter 25 which was necessary to remove doubts/that those persons naturalized in the Act of 1740 could possess the "offices civil et military"in the colonies.

That in order to have intended a place in Parliament within this expression it would have been necessary to Qmit the ordinary clause which contains the exception of places in Parliament, and that the insertion of the Clause of Exception in the statute, 13 George II, Chapter 25 only relieves those doubts in regard to military and civil offices in the colonies of America.

One of the correspondents in the Mercury, which was an organ of the English minority, on the 15th of February, 1808, wrote contesting the power of the Legislature to expel any of its members; that the act in virtue of which Mr. Hart was expelled did not specifically set out the book on which one must take the oath; that it was left to the discretion of the Commissioners of the Crown, that the oath taken was binding on the conscience, and that the Assembly had no power in regard to this matter. In the issue of February 22nd, another correspondent added that the Parliament was guilty of a grave insult towards the electors of Three Rivers of which the representative had as much right to sit in Parliament as a Catholic or Protestant. The same writer, on February 29th, in the Mercury, relying on the Statute 13 George II, Chapter 7, argued that the Jews had even more rights then the Catholics and it is only by the Quebec Act that the Catholics were placed on a footing of equality with the Jews, and mentioned that in the Quebec Act there was a clause that the Assembly shall not have the right to disqualify any of its members without the consent of the English Parliament. He claimed that this resolution of expulsion was in contradiction to the statutes of Parliament in force in this province; and wanted to know why the Catholics, by mere vote, take away the just rights of a sect more sympathetic to the English then they were. He quoted the opinion of the Solicitor General of England in 1807:

"I see no legal objection to the eligibility

of a Jew who was elected to a seat in the Assembly after he had taken the required oath.

Also that of the Attorney General of Quebec -

"I consider that the right of Mr. Ezekiel Hart to be elected and sit as a member of an assembly is the same as any other representative". Signed J. Reid, Montreal, April 20, 1807". (1).

The writer continued with a long argument striking at the Catholics depriving a member of the legislature of his rights, in a resolution which he considered framed in a cowardly fashion. He warned the Catholics that they themselves might be subjected to the same treatment, and then followedwith a harangue against the ignorance and superstition of the Catholics, and regretted that the adopted resolution has robbed the Jews of the right of being heard and of hearing their case "which right Parliamentary practise has given even to the humblest slaves when laws concerning them were about to be enacted."

In May 1808 new elections were held in Three Rivers and Mr. Hart was re-elected, defeating Pierre Vezina and L. Foucher, which clearly showed that anti-Jewish prejudice had not taken root, at least in Three Rivers. In fact the result of the vote was as follows:

Joseph Bedeau	47 Votes
Ezekiel Hart	59 "
Vezina	46 "
Foucher	42 "

But the last named withdrew and was later appointed Judge of the King's Bench in Montreal, 1812. This was a hard blow to the French majority in the Assembly

1. Tasse supra, p. 419.

and the town celebrated. The Regiment of the Fencibles with a band at its head, escorted the two members to the Court of Justice and to their homes, where a banquet ensued. Later, they all went to the market place and to the barracks where merry making went on until the early hours.

The Legislative Assembly opened on April 10, 1809 and Ezekiel Hart took his seat along with the English Members and voted in several of the Parliamentary motions at the time, but his presence started the quarrel anew and from the 17th of April on resolutions were passed, headed by Mondelet, which further established that Mr. Hart was the same Ezekiel Hart who was returned as one of the representatives of Three Rivers in the last Parliament and was declared incapable of sitting, and in voting in the last sessions as he professed the Jewish religion. This resolution was carried by a vote of 35 to 5 on April 18, 1809.

On the 24th of April, leave was obtained to bring in a Bill to remove doubt respecting the illegibility of persons professing the Jewish religion to sit or vote in the House of Assembly, which Bill was read for the first time;on April 28th this bill was read the second time and then the discussion in Parliament took place in regard to the manner in which Mr. Hart took the oath, when evidence was brought in by two Members who personally knew that he took the oath, with his head uncovered and his hand on the book. When the book was presented to Mr. Blackwood, one of the Members who was sworn with Mr. Hart, Mr. Blackwood, asked the commissioners appointed what book it was, and the Commissioners replied "It is the New Testament"; and that Mr.

Blackwood said "it is very Well", kissed the book, and presented it to Mr. Hart, who kissed it also, and as a result it was moved to resolve that the oath on the Holy Evangels could not bind Mr. Hart and he profaned the religious institution thereof, and could not take a seat, or sit, or vote in the House. The last quoted words were put in the form of a resolution. It was carried by 18 to 8.

"RESOLVED that Ezekiel Hart, Esquire, professing the Jewish Religion cannot sit, or vote in this House".

On May 6th, a Resolution was passed trying to rescind the above resolution and putting in its place one with similar wording, adding only that "until he could make it appear to this House that he hath embraced the Christian religion", etc.

An amendment was made by Mr. Muir, seconded by Mr. Justice de Bonne, who had formerly opposed Mr. Hart, but changed his attitude to gain the support of the English, "That Mr. Hart having been duly returned as a member of this House for the burough of Three Rivers, and having taken the oath required by the Act of 31st of His Majesty's reign, Chap. 31st, has a legal and constitutional right to sit and vote therein. But this amendment was lost and the original motion was carried.

On May 8th the speaker of the House was acquainted by the House of the fact that there was a vacancy for the representative for Three Rivers, and the motion to refer to a committee of five members, a bill to remove doubt respecting the eligibility of person, etc., was read and lost.

In order to prevent any occurrence of the possibility of a Jew sitting in Parliament, led by Mr. Bedard of Montreal, there was introduced a bill to disqualify Jews from ~~s~~sitting in Parliament, but this Bill was too much for the Governor-General who came to the rescue of his friend Mr. Hart. The third reading of the bill was fixed for the 15th of May, but Governor Craig dissolved the Assembly, condemning in severe tones the "constitutional infringement of the rights of the subject, repugnant to the very letter of the statute of the Imperial Parliament under which you hold your seats -- a dereliction of the first principles of natural justice". In the mean - time a discussion of the legal qualifications of Jews to sit in Parliament took place in the Council Chambers where the Governor-General submitted to a committee of the whole Council, including the Honorable the Chief Justice, certain questions, among which were: (1)

1. Under the Act of XXXI George III, Chapter 31, is a Jew eligible to sit in a House of Assembly of the Province.
2. If he is eligible and the house should by vote exclude him, assigning no other reason then that he is of the Jewish religion, is it not the duty of the Governor to protect such Jew equally with every other subject of his Majesty in the enjoyment of a just right?

And then continued with certain other questions asking whether it was not his duty to prevent the house assuming a power beyond that which was allowed to them, by the Act on which their existence is founded, and was not the declaring of any person not to be eligible to serve in Parliament, who is not so declared by that Act or the excluding or expelling such person when chosen, an assumption of such power as is beyond what is so allowed them.

1. See, Rhinewine, p. 53,foll. ; also, Price,Amer.Jew.Hist. Society,vol. 23. p.43

On May 10, 1809 the report on this reference of the Governor General was brought in, and the Committee was of the opinion ---"That a Jew may be elected to the House of the Assembly of this Province and may sit and vote upon taking the oaths required by law, in the customary manner. They founded their opinion on the Statute of 13 George II Chapter 7, and upon the various provisions of the Constitutional Act in which there is no clause excluding the Jew, and by which a natural born subject of his Majesty, or a subject of his Majesty naturalized by an act of the British Parliament, or a subject of his Majesty, having become such by the conquest and cession of the Province of Canada, can sit in Parliament; and it is their opinion that in view of the provisions of the Constitutional Act and the clear statement in the last mentioned section, that any candidate who has been naturalized by an act of the British Parliament (1), or who is a natural born subject, (which the son of a Jew so naturalized must be if born in the Province) ----- must be eligible to sit in the Assembly. The Committee also quoted the 42nd section of the Constitutional Act which requires a bill to be laid before both Houses of the Parliament of Great Britain in a question relating to the enjoyment or exercise of any religious form or mode of worship, etc. and that in view of this last section the concurrence of both Houses of the British Parliament would be needed by inference on account of any religious tenets; that the general disqualification by the House, not declared by the Constitutional Act or by some Provincial statute, would be an assumption of power beyond what is allowed them by the former statute. However, they did not advise at present a dissolution of the House, etc.

1. Consequently a Jew naturalized by the Statute 13,Geo.II, Chap. 7.

They considered, however, that Mr. Hart was expelled because he professed the Jewish religion and for no other cause, and that he is entitled to the justice and protection of his Majesty's Government, and the question of expediency of dissolution was gone into.

As a result of this opinion, on May 15, 1809, Govern Craig dissolved the House and Mr. Hart relinquished the struggle (1).

This ends the famous incidents of 1808 and 1809.

We have seen up to the present that our original opinion in regard to the political rights of the Jews in Lower Canada has been confirmed in the main by the evidence and proceedings which we have just narrated. The controversy of 1808 and 1809 in regard to the taking of the necessary oaths was unquestionably more political in its nature than an essentially racial matter. The recognition of Jewish rights by such a large portion of the House of Assembly and confirmed by legal authority should have put the matter at rest, but political exigencies are supreme even in the face of direct legislative enactment and judicial opinion. It must be remembered that the House feared to go the limit of a direct enactment against a Jew sitting in Parliament, and the

1. Note correspondence between Sir James Craig and Viscount Castlereagh, Secretary of State for War on p. 62 of Rhinewine (supra) from Kennedy, Documents, p. 252.

arguments of the opponents of the Jews were based on sophistry, rather than on a broad interpretation resulting from a fair consideration of the issues involved - and were in the spirit of partiality. This is confirmed by subsequent history, for when these doubts were removed, it was not as a result of any change in the law of England or Canada.

On the fourth of December, 1828, a Petition was presented by the Jews of Montreal in regard to a Bill for the removal of certain disabilities in regard to the keeping of public registers of Jewish Births, Marriages and Deaths, etc. It will be discussed under the history of the civil status of the Jews of Lower Canada, the passing of which, later in 1830, had some bearing on the passing of the so-called Jewish Bill of Rights in 1832.

A petition was presented on the 31st of January, 1831 by Mr. Neilson, referring to the just and liberal dispositions manifested by the Government of Great Britain towards those professing the Jewish religion, as shown by the two Acts of Parliament, 13 George II, Chapter 7, and 13 George III, Chapter 25, and that the Jews expressed the belief that their religious principles could not be of sufficient reason to prevent them from accepting and occupying whatever office or place of trust, whether civil or military in the Province -- to which they might be elected or appointed, etc.

In the meantime the Governor, Sir James Kemp had sent a circular letter, dated July 26th, 1830, asking whether Mr. Samuel Becancour Hart, of Three

Rivers, a son of Ezekiel Hart, and an outstanding citizen would accept a commission of a Justice of the Peace. Mr. Hart accepted this office by his letter of July 28th, 1830. He was not, however, appointed, and as a result he presented a petition to the Legislative Assembly on February 7th, 1831. In this Petition, Mr. Hart complained that he was refused a commission of the Magistrate of the Peace on the ground that as a Jew he could not, according to the decision of the Executive Council, take the required oath. He further mentioned that the office was offered to him by Lieutenant Colonel Yorke, Secretary to Sir James Kemp, and contended that the English Laws which accorded privileges to Jews were never observed in Canada, since according to these laws even a foreign born Jew, after a residence of seven years in the Province, may be come naturalized and thus acquire the right of filling various offices. He prayed that the House relieve him and his brethren from every disability to which they were subjected through the legal acts of the Colonial Executive. This was followed by a letter to the Governor, Lord Aylmer, on February 14th.

On March 16th, 1831, Mr. Neilson, who had presanted the last two mentioned Petitions, introduced a Bill in Parliament on behalf of the Jews. This Bill recited that "whereas doubts had arisen whether persons professing the Jewish Religion are by the law entitled to many of the privileges enjoyed by other subjects, within the Province", and it declared

> "That all persons professing the Jewish Religion be naturally born British Subjects inhabiting in the Province, are entitled and shall be deemed to be entitled to the full rights and privileges of other Subjects of His Majesty, and capable of taking or enjoying any office or place of trust whatsoever within the Province."

This Bill passed the House without much discussion. On the 18th and 19th of March, the Bill was read a second and third time respectively. On March 31st, it was reserved for the signification of His Majesty's pleasure thereon. On the 5th of June it received the Royal Assent. Before making any further comment upon this Act (the text of which is appended), we shall relate the events immediately subsequent thereto, in order to show that even the passing of this Act did not accomplish all that it was hoped for. There were still attempts made to deprive the Jews of their political rights.

Mr. Samuel Hart was again sent a circular letter in the summer of 1833, asking him if he would qualify for Justice of the Peace, and he accepted, and after some difficulty he qualified and sat on the 21st of October, 1933. (1).

Moses J. Hayes and Benjamin Hart of Montreal, who received a similar letter, did not accept however, being led to believe that they would be unable to qualify, being unable to take the oaths (2).

Meanwhile, considerable correspondence went back and forth between Lord Aylmer and the Colonial Minister at London in regard to the qualification of Hayes and Benjamin Hart, which they claimed "they are now competent to fill by law" but that the statute did not provide for the omission of the final words of the oath of abjuration and that as a result they declined. He mentioned the legal opinion submitted on their refusal (3) and asked for relief as he was informed no enactment on this subject in Canada would avail (4).

1. Evidence before Legislative Committee 1834, Lower Canada Journals, Appendix gg. See, ante, p. 45.
2. See, ante, p. 46; also, Appendix, ante, p.304.
3. Appendix, p. 305.
4. See, Sack, Jew in Canada, p. 37.

This correspondence was continued in August of 1833 and the Colonial office evidently considered that the Provincial Legislative had power to enact a remedy. That the Imperial Parliament would have no objection to any such legislation appears clear from the above correspondence (1).

A special Committee of the House was appointed by the Legislative Assembly about the 8th of February, 1834, on the recommendation of Lord Aylmer the Governor to tender a conclusive opinion on the question of Jewish rights in consequence of the Act of 1832. This question was gone into thoroughly by this Committee and various members of the Jewish community, as well as others, gave evidence. This Committee sat from time to time, and on the 15th of February, 1834,, the Attorney General, being called to give evidence in regard to the Act of 1832, refused to give an opinion as to what amendments would be necessary under the Act of 1832 to allow the Jews to be admitted into the Commission of the Peace, and merely stated when asked, that the difference between this Bill and the one proposed in England (2) was that in the latter it was declared that whenever Jews were required to take the Oath of Abjuration, the words "upon the true faith of a Christian" should be omitted.

On Monday, February, 17th, 1834, Aaron Ezekiel Hart, a lawyer living in Quebec, when examined, stated that he was of the Jewish persuasion, born here and admitted to the Bar some eight or nine years previously. He interpreted the Act as a declaratory one, setting at rest all doubt which might have existed against the Jews holding office in this Province. He told of a conversation that he had had with the Attorney-General.

1. Can. Archives Q. Series,210,pt.I,p.132; also Q.Series 26,p Pt. II, p. 476. These letters are set out in the Appendix, p. 289,following.
2. Journals of Assembly, Lower Canada 1834, Appendix gg. Evidence of Attorney General and those mentioned on pages 42 following herein. Sack,p.36 & 37 has a brief reference to these proceedings.

The latter had evidently thought that all doubts had been removed, as he had recommended Mr. Benjamin Hart and Mr. Moses Judah Hayes of Montreal as Justices of the Peace there. They accepted, but later declined on account of the oath. He urged the Attorney General not to omit his brother's name in a Commission for Three Rivers, threatening exposure if he did so, and said that he would have indeed felt annoyed had his brother's name been left out. The Governor in Chief had told him that when he came into power, and after the Legislature had passed an Act admitting the Jews to office, he would put his brother's name on the list.

Mr. Hart thought that it was not necessary to amend the Act to remove the doubt, claiming that His Majesty's subjects professing the Jewish religion were born to all the rights, franchises and immunities of His Majesty's other subjects residing in this Province, except where a positive enactment of law excepted them from the enjoyment of any of these rights, etc. This was supported by the highest legal authority and there was not one positive enactment which excluded Jews residing in this country from the enjoyment of their rights, or which in any manner affected their claim to equality with their Christian fellow subjects, in all the privileges, consequent upon their duty of allegiance as a natural born subject of His Majesty. He showed that 10 George I, Chapter 4, which enacts that the words "upon the true faith of a Christian" should be omitted by a Jew when he takes the oath of abjuration, had been said to have expired, though he claimed there was no evidence that this was so. Yet, he argued that this oath was introduced when there was not a Jew in the Kingdom, and they were not recognized in the other liberal countries of Europe as a separate

class; hence, the oath of abjuration was not intended for them; that the concluding words of the oath of abjuration were put in at a time when dissension was prevalent due to the introduction of strange religious doctrines subversive of Christianity and from the disposition of the people to reinstate the exiled Stewart family to the throne, and pointed out the necessity for such an enactment then. He pointed out further that in view of the above principles, the purpose was never attended to by persons of the Jewish faith in this Province knowing the fact that Jews had several times been called to perform duties of Grand Jurors and had in the presence of the most eminent advocates of this Province taken all oaths administered to them on the Pentateuch of five books of Moses. Discussing what Acts had been passed directly affecting the Jews, he showed that there had been none, excepting 13 George II, Chapter 7. This had not been repealed, nor had it expired; that it was part of the law of the country applicable to the present question, and that this Act had been improperly considered, especially by Mr. Aaron Philip Hart () who had addressed the Governor Chief telling him that it referred solely to naturalization. The witness proved that it was not intended only for naturalization, but that by the last section of the Act, a special clause was inserted, namely: that within the Kingdom of Great Britain, etc., persons who had been naturalized under its provisions of the colony were incapable of enjoying any office there and that it required a distinct provision to say that they should not be admissable to office

within the Kingdom of Great Britain. This showed that they were allowed to office within the colonies; that it was not necessary to refer to the Act of 1832 in Canada as His Majesty's subjects were born to all the rights and privileges of His Majesty's other subjects, there being no positive enactment preventing the enjoyment of these rights.

Mr. Mordecai Adolphus Hart gave evidence as well as Mr. Samuel B. Hart. Mr. Samuel B. Hart went over the history of his appointment and the various communications with those in authority; he referred to his correspondence with the Clerk of the Court of Three Rivers (1) discriminating against him in that he was asked to qualify before one month after the date of his appointment instead of six months, which was allowed by law. It seemed that the others included in the commission did not receive a similar request. Mr. Hart narrated that he applied to Mr. Joseph Badeaux, one of the Commissioners, to take oaths in a manner expressed by the Act of 13 George II, Chapter 7, then in force in regard to the exemption of persons of the Jewish persuasion, that is, excepting the words "upon th e true faith of a Christian". He took his seat on the 21st of October at the quarter sessions where he met the Justices of the Peace of the District and they insisted that he take the Chair. The Clerk of the Peace handed the parchments to each of the Magistrates, but not to Mr. Hart because he had already taken his oath before Mr. Badeaux. When Judge Vallieres took his seat and was given the oath he said, in the presence of the Court, in regard to the oath of abjuration "I see no objection in taking this oath, but I declare before all that this oath is not

1. See, Appendix, p. 297 following for original correspondence herein from Journals supra, Appendix gg.

according to law". Judge Vallieres had previously given his opinion that there was nothing to prevent Mr. Hart from taking his seat; Mr. Hart also mentioned the fact that he heard that the two gentlemen from Montreal had been offered the Commission, but later on were asked not to accept, and being requested to refuse likewise, he refused to do so, being persuaded that the law was in his favor.

The evidence of Mr. Joseph Hayes stated that he was persuaded by the opinion of his lawyer, Mr. Aaron Philip Hart, which was forwarded to his Excellency, that if the difficulty of the words "upon the true faith of a Christian" had been left out he and Mr. Benjamin Hart would be able to qualify.

It is interesting to read the correspondence between Samuel B. Hart, and the Clerk of the Peace of Three Rivers and the opinion of Mr. Hart in regard to this matter (1). The former shows that prejudice still existed against Jews and sets out in greater detail the struggle for the eligibility of Jews to take the necessary oaths and to hold the office of Magistrate.

On the 25th of February, 1834, the Committee brought in its report and the general question of oaths was gone into thoroughly. After discussing the oath at Common Law, the Committee dealt with the oath of the Justices of the Peace, which was required either by the Criminal Law of England introduced by the Quebec Act, or by an Imperial or Provincial Statute; the qualification by the English Statutes was not applicable to the condition of the Province, nor had it ever obtained therein, in spite of the fact that the general body of the Criminal Law of England was introduced into the Province.

1. See, Appendix, p. 297.
2. For full report as contained in Journals of the House (supra) see Appendix, p. 292.

The report set out that the particular qualification of the British Statutes - that as to the oath of abjuration was as little applicable to the colony at the time of the passing of 13 George III as the other qualifications required by the same laws as to land and property confessedly were. They quote the argument that by the Law of England, every Justice must take the oath of allegiance, abjuration, etc. and this was in force in Canada because the law of England was introduced into the Province. They then discussed the British Statute 13 George II, Chapter 7, in regard to the Jews and their holding office in the colonies, stating that under this Statute Jews, as well naturalized as natural born could hold office within the colonies; that the statute seemed to be based upon the ground that natural born Jews might hold office and this object seems to have been to confer on naturalized Jews within the colonies the same privileges in every respect as were held by other natural born brethren therein.

It is not to be believed they stated that the Parliament intended under any circumstances to give to the naturalized foreigners under this statute rights that were denied to natural born subjects of the King. One great object also which appears to have been contemplated by that statute was to fill the colonies with men and capital not Roman Catholics. It would have seemed that the words of this statute were too clear to leave any doubt of the right of the natural born Jews to hold office in the colonies, still the difficulty which has since been made here was then also made. It was said

that as the Jew could not use the last words of the oath of abjuration, he could not take that oath, and that although the words of the just recited statute were general, yet as they did not specially authorize the appointment of Jews into the colony, the statute received a limitation in this particular; but [illegible] the words "upon the true faith of a Christian" constituted no part of the promise to receive its religious sanction on the taking of the oath of abjuration. By the common law the particular religious form of oath must be regulated by the particular religious belief of the party taking it, as well upon the proposal of a just toleration as from the purpose of obtaining the highest possible religious sanction from the particular person who takes the oath to guarantee its accomplishment.

The report goes on to state that to remove the above doubts/slender as appears to have been their foundation, the British Act 13 George III, Chapter 25, was passed and the word "declare" used in the statute is decisive and on the highest authority. Therefore, this is direct authority in support of the general decision that the words "upon the true faith of a Christian" had not in the law the fact of disqualifying a person who could not have used these words and who was otherwise qualified to hold office in the colonies. The Roman Catholics had not been required to take this oath from the earliest times, and the previous statute of 10 and 11 George IV, Chapter 2, in regard to qualifications of Justice of Peace contained no provision which prevented a person professing the

Jewish religion from qualifying as a Justice of the Peace. Notwithstanding that it would seem from what is said above, the Jews have the same right to hold office in the colonies as any of their fellow subjects, doubts were expressed on this point up until the passing of the Act of 1 William IV, Chapter 5, which they consider clear on this point.

They then mentioned that the Act of 1832 could not have intended a Jew to use the concluding words of the oath of abjuration because that would have made the statute 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 and they must be construed so that the statute be carried into effect. They held that if the oath was necessary to a Jew to enable him to have that power which the statute conferred on him it must be taken by him without these words, otherwise it would make the whole matter a mere mockery. The sanction of the oath is the faith of the man who takes it. They further stated that the general principles above laid down, and the interpretation of the Committee, could not be questioned by any competent authority. They regretted that two Jews alone had raised any objection to the existing law and by their own interpretation of the statute, instead of taking the oath required, as did Mr. Hart, a Jew, who now holds the office of a Justice of the Peace. They recommended that no additional Legislative enactment was necessary.

On the 24th of April, 1834, David Chisholme, Clerk of the Peace for Three Rivers sent a letter to Lieutenant Colonel Craig, Secretary to the Governor in

Chief Lord Aylmer containing a copy of the Presentment of the Grand Jury at the then sittings in which the Jurors stated that they were surprised that Mr. Hart had persisted in sitting as a Justice of the Peace without having taken the oaths and subscribed the Declaration in contravention of the Statute in force in Lower Canada, and they asked for a remedy. (1).

The general question of the appointment of Jews to the above office was left for some time. On June, 1837, Mr. Arthur Wellington Hart, a son of Benjamin Hart, then in England, received a letter from Lord Glenelg in reply to a communication of his that the Home Government could do nothing in the matter and it depended on the Legislature to allow the oath within the Province and that they regretted the exclusion of persons professing the Jewish religion though they could not afford any relief. (2)

On August 5th of the same year, Moses Hayes and Benjamin Hart were gazetted as Magistrates for the District of Montreal, being the first Jews in Canada to whom such honor was bestowed. The document was signed by Queen Victoria (3).

One more incident deserves to be mentioned to complete the so-called political struggle for political rights of the Jews. At the time of the Rebellion in Lower Canada of 1837, the Government was run, more or less, by special Councillors who were appointed by the Governor

1. Archives of Can. Series S. Lower Canada.
   For Text of Presentment see Appendix, p. 309 and translation by Mr. Justice Riddell, who had published both in The Canadian Jewish Review, July 28, 1933, subsequent to our obtaining them in the Archives.
2. Sack, p. 37.
3. Ibid, p. 38.

on the recommendation of the Law Officer of the Crown.

In a letter from Lord John Russell to C. Paullet Thomson, the former enclosed a letter from Arthur Wellington Hart of Liverpool complaining of the disability under which his father Benjamin Hart of Montreal labored in regard to the filling of public situations of honor and trust in Lower Canada in consequency of his being of the Jewish persuasion and asked Thomson for any observations which he had to offer (1).

The letter of Mr. Hart and the replies thereto appear in the appendix (2) and they are an interesting commentary on the so-called "Magna Charta" of 1832. They show how difficult it is to legislate equality when the political powers decide otherwise, and even though Thomson admitted in this case "that his religious persuasion ought not to be a barrier to his admission to special Council" "yet that this would give him no claim independent of other considerations, to be admitted to that body". Mr. Hart, in his letter, complained of the intolerant spirit of the Lord Bishop of Quebec in regard to his Father, in spite of his commendable work as Magistrate during the Rebellion; of the spirit of intolerance and injustice to Jews of the Law officer of the Crown. He considered his father much more entitled to the position than many who were appointed and that was due to the "inseparable barrier of disqualification from Religious tenets". He asked his Lordship to "set at rest the misgivings entertained by my friends (Jews) of the repeated slight offered by the Attorney General of Lower Canada on the grounds of their religious tents" - This letter was forwarded to C. Poullet Thomson

1. Can. Archives, G.45, p. 122.
2. Ibid, see Appendix, p. 311,foll. 4.

who replied to Lord John Russell on the 20th of January, 1840, and on the 21st of January 1840 the Governor General Thomson wrote to Hart and stated therein that "His Excellency cannot assume that the omission of his name in the list of Special Councillors had any reference to his religious profession". (1)

From the foregoing, it would now seem clear that a Jew born in the Colony, that is to say a British subject, had his rights confirmed by the Act of 1832, and any discussion of these rights should have ended with the report of the Legislative Committee of 1834, which dismissed the question of the non-provision for the taking of oaths, and considered that Jews had all the rights of citizens. Even in the discussions as to the appointment of Mr. Hart as Special Councillor, those in authority admitted that their religion was no bar to holding that office.

The argument that the Naturalization Act of 1740 was in force was confirmed by the proceedings in the Assembly and on the grounds that I have set out during the course of this essay, and therefore, Jews so naturalized would continue to possess all the rights of citizenship as well.

We will now discuss the general laws as to naturalization which leaves untouched the Act of 1740, but under which an alien, whether a Jew or otherwise, would be able to become naturalized, and receive the same rights as one who was born in the Colony; also the legislative enactments confirming by law the general rights of Jews and others in Canada to the present time.

1. Can. Archives, G. Series 388, p. 37.
" " , G. " 458, p. 90. Russell
Since obtaining these documents Mr. Justice has published this correspondence in article in Canadian Jewish Review supra; see, Appendix, p. 313, foll. N.

The Act of 1832 referred, as we said above, only to natural born British subjects. The Statute of 1841, 4 Victoria, Chapter I, Article 3, an Act extending over the whole of the then Canada provided that a naturalized person acquired the right to hold land and transmit immovable property from the beginning of their residence in this Province.

This was "An Act to secure and confer on certain inhabitants of this Province the civil and political rights of natural born British Subjects" and provided that all aliens residing in the Province on February 10th, 1841, resident seven years before, shall be deemed and taken to be natural born subjects of Her Majesty's and acquired from beginning of residence here, capacity to hold, occupy, etc. convey real estate within the Province or either of late Provinces. This Act is not to interfere with the Act of Upper Canada or repeal <u>any act now in force in the Province for naturalization of any alien or class of aliens.</u>

"Those aliens who at time of 1841 received privileges of British Birth by general, or special act of naturalization in force in part of Province shall be deemed to same rights throughout the Province".

This Act limits naturalization to those actually resident in 1841, extends rights to the whole Province and recognizes the former Acts including British Naturalization Acts in force (and the Act of 1740) here, to be in force in the whole province.

The Civil Code of Quebec, Article 24, which is general in its terms, confers on Lower Canada, on him who obtains naturalization, all the rights and privileges he would have if he had been born a British subject, Article 18, says that

every British subject is as regards the enjoyment of civil rights in Lower Canada, on the same footing as those born therein (1).

The Act of 54 Victoria, (1849) Chapter 7, was a general Act of Naturalization for both Provinces, and not limited in regard to date. The Consolidated Statues of Canada,(1859) Chapter 8 incorporated this Act. The Consolidated Statutes of Canada, Chapter 6½ Section 4, stated that only those of the full age of twenty-one, and subjects of Her Majesty by birth or naturalization could vote at elections. Several later Naturalization Acts were passed in Canada after the consolidation of the Provinces into the Dominion of Canada in 1867, with changes ~~that~~ in the Law of Naturalization which do not particularly affect Jewish rights. (2)

The general confirmation of the principles of the Act of 1832, was recognized in later legislation by the Revised Statutes of Lower Canada, 1861, Chapter 34, Section 7, and the spirit of the Act of 1829 and 1832 was further assured by 14 & 15 Victoria, Chapter 175 (1851), (assented 15th of May 1852) and applied to the whole Province. This latter Act was an Act to repeal part of the Act of Parliament of Great Britain, 31, George III chapter 31, and contained the following:

Whereas the recognition of legal equality among all Religious Denominations are admitted principles of Colonial Legislations and whereas in the state or 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

1. The Code cites Capitutation, Quebec 1759, Treaty of St. Germain 1763 C. Napoleon 8,I,251, as its authority.
2. See Acts 31 Victoria, chap. 66 (1868), Canada amended by 34 Victoria, chap. 22 (1871), Statutes of Canada.

and enacted ------that the full exercise of enjoyment of Religious Profession and worship without Discrimination or preference, so as the same be not made an excuse for act of licentiousness or a justification of practices inconsistent with the peace and safety of the Province as by the Constitution and laws of this Province allowed to all Her Majesty's subjects within the same. (1)

This law appears in C.S.C.(1859) Chapter 74, section 1, Revised Statutes of Quebec, 1888, Volume 2, Artide 3439, and by Revised Statutes of Quebec, 1909, Volume 2, Article 4387.

1. See, Appendix, p. 252 for complete text of Act. Crestohl in his "The Jewish School Problem, p. 3, refers to Act of 1859 and quotes part of it; also Sperber in his article in Jew in Canada.

CIVIL RIGHTS OF THE JEWS IN QUEBEC (Lower Canada)

II.

Before Canada was conquered by Great Britain in 1759, it was a French Colony, and as a result, subject to French public law, which forbade all except Roman Catholics to settle here. Jews and Protestants were thus excluded. There was a Royal decree forbidding the Jews to settle in the Colonies. (1). This was so until Britain, which was predominantly Protestant, conquered Canada and brought with them the public law of England. (2).

After 1759, there was some doubt as to whether English or French civil law was in force in Canada. In view of the terms in the proclamation of 1763 of the establishment of English law as against the rule of law that in a conquered country the laws of the country remained in force until changed. (3).

However, this did not formally replace the French law by English laws. Following the proclamation by an ordinance of 17th of September, 1764. General Murray and his Council introduced the criminal and civil laws of England into the colony, but it has been contended that this was illegal because the proclamation required the consent of the Government Council and Assembly, before introducing English laws. (4).

The matter was finally settled in 1774 by the Quebec Act bringing French Civil Law, or, as it was termed, the Coutume of Paris into Canada. This French Civil Law, in the main, was composed of the Coutume of Paris.

1. See, Sack, p. 1, Jew in Canada.
2. Sperber, Jew in Canada, p. 461.
3. Campbell vs. Hall, supra, p. 3, note 1.
4. Mignault, Droite Civil Law, vol. I, with an excellent introduction on the history of French Civil law in Canada.

This was in fact one of the important branches of French Law up to June 17th, 1789 when the Law in France was codified. However, in Canada, the so-called ancient law, including the Coutume of Paris, was followed until the civil law of the Province of Quebec was codified in 1866. In this Code, the Coustume of Paris remained the principal source of the civil code, but the Napoleonic Code was followed as well.

Let us first discuss the rights of an alien in regard to civil matters in the Province of Quebec, which would be based upon his similar rights in France.

Previous to the French Revolution, there were certain disabilities in regard to aliens under French Law in regard to civil matters; such as the Droit d'Aubaine, i.e. the succession by the Seigneur to the estate of the alien; an alien could not transmit by succession, or will, except for very small amounts for pious purposes, nor receive by succession "ab intestate" or will with the exception generally for his legitimate children. To appear in justice, he had to give securities for the payment of damages and costs. Later, he was given the right to transmit by succession to his legitimate children born in the Kingdom or naturalized and living in the Kingdom, and to his French heirs. From the French Revolution on (1789) certain changes were made in the law and the principle of civil equality were proclaimed. The Droit d' Aubaine was abolished. By a decree of 8th April, 1791, they were given the right to succession in France to their Parents even French, and to transmit by every legal way, which rights were recognized formally by the Constitution of 1791. (1).

1. Coderre, Naturelization in Lower Canada up to 1840, supra, discusses French law in regard to Aliens (unpublished article). See, also, Dame Klasmer vs. Lifschitz, 63 Superior Court, Quebec, p. 117, judgment of Brodeau, J.--see ante p. 80.

The civil rights of aliens at this time can be summarized as follows:

> "Although aliens may contract in every way inter-vivos and consequently transmit the properties in France by onerous or virtuous title; but they may not do it in contemplation of death in favour of aliens or denizens.
>
> They could not as well, acquire anything by succession or will in contemplation of death. The discrepancy established by the law between acts inter-vivos and those in contemplation of death is based on the nature itself of these acts; acts inter-vivos belong to (Jus gentium) of which aliens have rights and therefore may act inter-vivos; On the contrary the opposite of giving or receiving by will belongs to Jus Civile which aliens do not enjoy. (Pothier traite des personnes) tit. 11 section 2.

This principal governs the rights of aliens in Lower Canada (1) up to 1849 when 12 Victoria, Chapter 1927, Section 12, brought some modifications which were embodied in the civil code of Lower Canada, which came into force in 1866 and which are found in Article 25 of the present civil code.

The Act of 1849 is a Naturalization Act applying to the united provinces of Canada, and it provides as follows:

> "And be it enacted from and after the passing of this Act, every alien shall have the same capacity to take hold, possess, enjoy, claim, recover, convey, devise, impoart and transmit Real Estate in all parts of this Province as

1. See, Coderre supra.

a natural born or naturalized subjects of her Majesty in the same parts thereof respectively", and this was not to affect any right or title vested previously. This was later extended to Personal property. (1).

However, we have pointed out that after 1759 either by birth or by naturalization a Jew would be a British subject entitled to all rights of any other British subject and this would include civil rights. It has been pointed out by Mr. Sack on Page 17 of this article mentioned above "that nowhere were they looked upon by their Christian neighbors as strangers or foreigners, but were regarded by them as British subjects".

In fact, from the earliest times, a Jew had the right to sue and be sued as appears by the countless cases in the Courts of Quebec and in no case that I have examined does the dfence set up any question against this right.

We have examined the reported cases in Lower Canada up to 1864 and while We have found most of the prominent Jews parties of many of these cases, not one of them seems to give us any aid in determining whether the Courts have put any limit to the civil rights of Jews. In fact, one might be led to conclude that there was no such limitation. These cases are mostly in regard to commercial matters in which such families as the Harts, Josephs, Davids, Hayes, and others are involved. The reported cases start from about 1811. (2).

It is very common to see such style of causes as:

Hart versus Hart

David versus David (10 Lower Canada Reports)P. 453.

1. Naturalization Act 1881,44 Vict.,chap.134 assented 21 March 1881. now in R.S.C. chap. 103,s.3.
2. Besides going through the very early volumes of individual reports, we have read the cases of likely interest indexed in Robertson's Digest of Lower Canada (1864) a digest of all reports published in Lower Canada to 1863 and also the digest itself.

But, of course, a Jew suing a Gentile, or vice versa, is just as common. There are, however, many earlier cases not reported, from the year 1765 onwards. Some of the style of cuases, being as follows:

Eleazar Levy versus R. Burten, et. al. Montreal, January 1765

Levi Thompson " Solomon Levi, Montreal, February 21,1767

Jeremiah Daly " Samuel Jacobs, February 9, 1768

Eleazar Levy " Fis Chevalier, Quebec, Aug. 17, 1768

Samuel Judah " Moses Hart February 17, 1772

Lazarus David " Nidine Denny Delisle, Montreal, January 18. 1773

Samuel Judah " John Moring October 28, 1773

Isaac Levy applied for the issuance of a commission of bankruptcy on the 8th of February, 1768. (1).

I also refer to two other cases, the original papers of which I have seen in the Quebec Archives, namely:-(2)

Levy Solomons versus Phillipe Rocheblave, April 28, 1787 on a note as signed to him. #6359, Court of Common Pleas; also

Levy Solomons versus Thomas Sketchley, June 10, 1789 suit for balance of goods owing. #6369, Court of Common Pleas.

In the former case the defence filed raised no point against the plaintiff being a Jew.

In regard to the limitation of mobility, the Jew was under no disadvantage as he was permitted to travel from place to place, provided, however, he gave a bond to protect his creditors, if he desired to leave the Province. This bond was exacted from all inhabitants irrespective of

1. For the above cases see, Can. Archives Series "S" Internal Correspondence, which is indexed, in the Archive office, for Lower Canada.
2. Quebec, Palais de justice, Archives Departement.

creed and even when the party intended to return within a short time. For instance:

Alexander Hart, of Montreal, gave a bond for leaving the Province on October 29th, 1808. The original bond for Alexander Hart shows that it was made by Michel Berthelot and Benjamin S. Solomon, Merchant of Three Rivers, for £200., reciting "as he intends to leave the Province after thirty days from the date hereto, but business requires he leave before then and this bond secures his creditors who have already entered caveats in this office against granting him a pass for departure." (1). Moses Hart at Quebec gave a bond for leaving the Province, dated October 13, 1768.

From the earliest times, licences were required for doing certain types of business and especially for keeping a liquor store or tavern, and there are on record many applications for licneses, which were secured from the government, for instance:

Lazarus David, Montreal, in the years 1769, 71, 72, 73 applied for a liquor licence.

Simon Levy also applied for a liquor licence for an Inn in Montreal on April 3rd, 1771 and 1772.

Michel Myers of Michilmackinac in May 1781 applied for a trade licence.

Elias Solomon, Montreal, April 11, 1770 a trade license for the upper country.

Elias Solomon, Quebec, 1775, shop licence.

Ezechiel Solomon, Montreal, April 10, 1772, trade licence and for the same party a trade licence for Michilmackinac, 1773 and 4; and one for Lake Superior, April 14, 1775.

1. Can. Archives, Series "S" Internal Correspondence, (see Index Thereto in Archives under names of parties). The papers in regard to the bonds and licenses next mentioned are all found therein.

Solomon Levy, Michilmackinac, trade licence, May 8, 1774.

Aaron Hart, Three Rivers, a liquor licence, February 24, 1769. A shop licence June 15, 1774, and April 4, 1775, etc. It is interesting to note that in the latter petition for the shop licence several citizens signed as to his credit, and reputation. In the liquor licence petition it states that the applicant has personally appeared before deputy secretary of the Province and paid £10 as a recognizance for keeping a common ale house and victual house for one year, and for keeping order, etc.

In the appendix are a few letters in connection with obtaining liquor licences, to the deputy secretary of the Province which might be of interest. (1).

The right of mortgaging or taking a mortgage appears never to have been questioned. Isaac aLevy, as far back as 1770 mortgaged a piece of land in Montreal, as appears from the following letter:-

Montreal, 1770.

"Sir:

About two years ago, I took a mortgage on a piece of land belonging to Madam Huitt in St. Paul St. in this city, which was registered in your office. I am advertising same for sale. It was claimed by Mess. De Pume, a butcher in Quebec, by a prior mortgage he says he has on said estate. I shall take it as a particular favour if you will be so good as to examine the register and let me know if there is any such mortgage, or how the mortgage runs, as this claim hinders me from recovering my money which I can not well lay out.

1. See, Appendix, p. 260 obtained from Quebec Provincial Archives, Quebec City--Correspondence to Alsopp (ante,p.63, note 1).

Your answer as soon as possible will much oblige,

Your most obedient and very humble servant,

'sgd' Isaac Levy"

Endorsed on back to George Allsopp, Esq. Quebec. (1).

From the very earliest times Jews had held and sold land. As far back as 1769, Lazarus David sold his property in Quebec on April 21, 1769 or thereabouts. (2). Samuel Jacobs advertised his property there for sale about the same date. (3).

Among the first settlers, Mr. Jacobs who lived at St. Denis on the Richelieu, and was a prominent agent there, owned real estate in Sorel, Montreal, Quebec, St. Charles, St. Denis, Albany, New York and Philadelphia. (4).

The first Jewish landowners in Montreal at the time were Lazarus David and Levy Simon. Both of them were inscribed in the Register of Landowners in the City of Montreal for the year 1767. Other names include

Ezekiel Solomon, 1780
Solomon Levy 1782, a large real estate owner
and afterwards Samuel David,
Samuel Judah,
Samuel Jacobs, and others (5).

Aaron Hart settled in Three Rivers and in recognition of his services in the British Army was given large tracts of crown land there and became Seignior of Becancour, & Seignior of Ste. Marguerite, and owner of the Fief Marquisat Dusable. (6).

From 1792 onwards therewere numerous petitions for crown or waste lands by most of the well known Jewish names of the times, among whom were Moses Hart, Isaac Judah, Jeremiah Judah, Levi Solomon, Lazarus David, Solomon David, and David David.

1. Correspondence 1768 to 1774 Alsopp--Letters addressed to him--see, Archives, Province of Quebec, vol. II (1917), Inventaire d'une collection de pièces judiciares, notariales, etc. where names are mentioned.
2. Quebec Gazette #210, 5/1/1769. See Series "S" under name.
3. Ibid, Quebec Gazette.
4. Sack, p. 14.
5. Ibid, p. 15.
6. Ibid, p. 16. Can. Archives Series "S".

There was a general encouragement given to settle on these waste lands, and the Governors received instructions (1) and made regulations in regard thereto. The applicants were to make certain oaths usual in England, one of which was objectionable to the Jew, namely, that of abjuration. From what was said in the chapter on political rights, the natural born or naturalized Jew should have been exempt from them (2). While I have not completely surveyed this field, yet the applications for land in Lower Canada, after 1791, do not seem to throw any doubt on their ability to hold lands in Lower Canada for many were granted, but further research on these applications might prove otherwise, especially in view of the situation in Upper Canada (3).

We find several petitions for the commission of advocates by Aaron Ezekiel Hart, Eleazar David, Aaron Philip Hart, Adolphus Mordicai Hart, Henry H. Judah, (Three Rivers, May 29th, 1829); Thomas S. Judah, of the same place September 13th, 1824. All were granted licenses to practise the profession of advocate. These petitions were of the usual form addressedto the Lieutenant-Governor of Lower Canada for admission and practice Barristers, Advocates, Solicitors, etc. They were referred to the Chief Justice of Judges of the King's Bench or any two of them for examination and for report concerning character, fitness and capacity, by the Governor Chief. In the case of Aaron Ezekiel Hart and Aaron Philip Hart, Montreal, the Chief Justice reported that the examination was satisfactory. (4). Aaron Ezekiel Hart was the first Jew admitted to practise law in Lower Canada in the year 1824. Aaron Philip Hart was admitted in 1830 and distinguished himself

1. See, Chapter on Land Holding of Jews in Upper Canada, ante, p. 192.
2. See, p. 10, foll. 9, ante.
3. For applications see Series "S" Can. Archives under Land Petitions, see, ante, p. 192 following.
4. C.A., Series "S" Internal Correspondence.

at the Bar (died 1843). Adolphus Mordicai Hart, admitted in 1836, had a large practice between the years 1840 and 1850, at which time he moved to the United States and died there in 1879. (1) For the subsequent history of the legal profession in Quebec, many Jewish members of which attained high distinction, we might refer to the Article on the Jew in the Legal Life of Canada contained in the Jew of Canada (2). While we have found so far no legal disabilities in regard to the civil rights of the Jews in Lower Canada (excluding the question of community status), we shall examine the subsequent history of Lower Canada (Quebec) to discover if there were in fact or in law such any disabilities. But first we shall deal with the Community Status.

1. The Bench and Bar of Lower Canada, A.W.P. Buchanan (1825), p. 100.

2. See, Jew in Canada, p. 374; see, also, Jews in Medicine, p. 410; Aaron Hart David commencing the practice of medicine in 1833; for history of Jews in Military life see Jew in Canada, p. 503; also, Sack, p. 33. There was however no real doubt as to the right to hold military office and Jews were prominent from the beginning as officers in the army.

Very good chapter. Lower canada and original sources the Latter conferred should of course be pulled

COMMUNITY STATUS

III.

From the earliest times the need for Community worship arose, although the Jews did not yet obtain autonomy in civil matters affecting their community in view of the fact that under the French Civil Law a register of civil status was required to register births, marriages, deaths, etc.

In 1768 the first Jewish Congregation in Canada began in Montreal where most of the Jews had settled. They chose as their name "Shearith Israel" a reminder of the Spanish and Portugese descent of many of them. They were guided spiritually by the Chief Rabbi of England, Dr. Raphael Meldola, to whom all points of ecclesiastical law were referred for decision. (1)

David David donated a plot of ground which he had inherited from his father, and in 1777 was erected the first synagagoue for eighty years the only one in Canada. This was situated on Notre Dame Street near the present Court House of Montreal. A tablet marks the spot. Shortly before 1777 a piece of land on St. Lauvrier near the present Dominion Square was acquired for a burial ground, which was later moved to the present Spanish and Portugese cemetery. Lazarus David (died in 1776) was the first to be buried in the older cemetery and was later moved to the present one.

Jewish life, if any, centred around the Congregation and the leaders of the Community were the Leaders of the Synagogue. Within their own sphere the 'Beth Din' of the Congregation had power of imposing penalties for in-

1. For history of the Congregation see Fiftieth Anniversary number of History of the Spanish & Portuguese Synagogue, "Shearith Israel" published in 1918.
See, Sack, p. 16, following.

fractions of their by-laws; for refusing to accept office, for non-attendance at service, etc. The decrees of the synagogue were a sort of code of laws for the Community, necessary to maintain order and severe penalties were handed out for impairing the harmony of the community.

That this local power had effect only so long as the parties desired to submit to its jurisdiction can be seen by the fact that often Magistrates had to compose differences in the communal life of the Jews. This is seen by the case in which Rabbi Cohen (1) was involved.

In 1778 Rev. Jacob Raphael Cohen was engaged from England as Schochet, Hazan, Teacher and Reader.

This case was a dispute over the salary of the minister who brought the Parnass Levy Solomons into court for refusing to pay it. Rev. Cohen sued the Parnass and the Congregation for around £49, as his salary and wages for acting in the duties of Schochet, Hazan, Teacher and Reader to the Jewish Congregation for three years, according to the agreement of February 13th, 1778, signed by Hyam Myers of London, acting for and on behalf of the Jew of this Province. We shall see the practice of one Congregation representing the Jewish Community persists for some time.

The above dispute continued for several years. Simon Levy, Samuel and Uriah Judah appeared for the Rabbi. On May 6th, 1784, the appeal Court reversed the original verdict and dismissed the action with costs. After this case the Rabbi left Montreal for Philadelphia. (2).

The community life seems to have been at a low ebb and suffering under certain disabilities which affected the civil rights of Jewish community as such, namely

1. Can. Archives, Series Q, vol.33-1, pp. 17-30. See, Sack, p.19; also proceedings of case by Sack in American Jewish Historical Society, vol. 31, p 181.
2. Ibid, Sack.

the right to keep registers of births, marriages and deaths in accordance with other religious groups and the general recognition as a Community.

On the 4th of December, 1828, a petition was presented by the Jews of Montreal, who at that time numbered about 107. (1).

The petitioners, whose names were subscribed on it, presented it to the House, through the Solicitor General and it recited that the petitioners possessing the Jewish faith were, by the present laws of the Province of Lower Canada, deprived of the benefit of public registers to record their births, marriages and deaths, by reason of which not only they, but from the uncertainty and difficulty attending the evidence of such facts, the interests of their fellow subjects of other denominations were much endangered; that due to the increase in the Jewish population and possession of valuable real property in the province, they feared the evils would be aggravated; that persons who profess the Jewish faith, being by the law of the Empire entitled to hold real estate, by title from the crown or the subject of the colonies, and by that circumstance placed in a relation towards the rest of the Society differing in some particulars from that in which their brethren residing in Great Britain and Ireland were situated, they desired a public record for more certain and durable proof of marriages, etc; for the welfare of the Community at large; to alleviate future difficulties on the subject of descent and inheritance of lands and other property amongst Jews in the Province and controversies which may prove fatal to titles of other subjects derived from the petitioners and their descendants. They complained that having no

1. Sack, p. 37; Rhinewine,p.69; Journals of House session 1828-29,p. 84. We have searched the newspapers of the period but have been unable to find a copy of the original petition. The fullest abstract of the Journal's record is in Rhinewine.

religious corporate body, they were incapable of holding land in the province as a place of interment for their deceased relatives or friends, and that the present cemetery in use for three generations, being for want of a corporation vested in individuals, now certainty was felt that the remains would remain undisturbed. The petitioners also asked to be able to hold through incorporation a piece of land in Montreal or its vicinity, to erect a building for the celebration of their religious worship and a fit habitation for a minister of their persuasion. They finally asked for themselves and others in Montreal, the benefit of public registers for recording births, marriages and deaths, enabling them by trustees, or otherwise, to hold land for a place of burial, etc. (1).

This petition was referred to a special committee who reported favorably on it and it was read the first time on December 13th, 1828, and on December 18th, 1828 for a second time. The petition was then referred to a special committee of five members including the Solicitor-General and amendments were made and engrossed on the 19th of January, 1829. The Bill passed the third reading, was amended by the Council and was finally passed on the 19th of January, 1829. On the report of the Executive Council, the Bill was reserved on March 14th, 1829 for His Majesty.

The Bill was submitted to the Governor in Chief by Sir James Kempt, Lieutenant-Governor, who, in a letter to the former, mentioned that the Attorney-General considered the Bill "imperfectly and insufficiently framed and not such as would be required to answer the purpose intended"; also that the Attorney-General considered it necessary to

1. Rhinewine supra.

observe certain formalities of Section 42 of Act George III, Chapter 31. (1).

These formalities required that the Bill, being one relating to provisions relating to the enjoyment or exercise of any religious form or mode of worship (2) - an address of Legislative Council and Assembly must be laid before both Houses of the Imperial Parliament before obtaining His Majesty's assent.

On Friday, March 19th, 1830, a Resolution was passed by the House of Assembly:-

"RESOLVED that His Majesty's subjects in this Province have a right to the free exercise of their religion, and that the Bill referred to in the message from the Legislative Council, delivered yesterday does not contain any Provision which in any manner relates to, or affects the enjoyment of exercise of any religious form or mode of worship that are not within the cases reserved in the 42nd clause of the act of the Parliament of Great Britain, 31st George III", etc. (3).

This was in answer to an address of the Legislative Council of the 17th of March, 1830, asking "That a Bill of the highest importance to a great portion of His Majesty's Subjects in the Colony, which "Bill contains provisions which may be considered in some manner to relate to or affect the Civil Rights of Persons of the Jewish Persuasion, be laid before both Houses of the Imperial Parliament." (4)

The Bill finally received the assent of His Majesty in a letter of November 3, 1830 transmitting the order of assent from Colonial Secretary Kempt to Aylmer (5) with the following remarks:

"The Bill for the relief of persons professing

1. See, Sack,p. 34. See, Can. Archives Q series 188,pp.11 & 292 also p. 294.
2. See, Constitutional Act 1791,sec.42 quoted supra p.10.
3. Can. Archives,series Q,194,Pt. 1, p. 197 following.
4. See, Sack,p. 34; see ibid (note 3)
5. Can. Archives Q Series 21,pp. 99-100.

the Jewish Faith has received His Majesty's assent, because although that Class of persons is probably not numerous in the Province" there is no sufficient reason why their Religious opinions should deprive them of any convenience which they can enjoy without detriment to the other inhabitants of Lower Canada. His Majesty's advocate and the attorney and the Solicitor General have reported to me their joint opinion that it is not necessary that this act should be laid before Parliament before the Royal Assent can be given".

The Act was known as 9 and 10 George IV, Chapter 75 and provided for the opening of a register by the Prothonotary of the Court of the King's Bench in each of the Districts of Quebec, Montreal - Three Rivers in which every person professing the Jewish religion, residing in that District who is a British Subject, over the age of twenty-one years, may inscribe his name, age, profession or occupation and place of residence.

The following provisions applied to each of the districts: when 15 persons or more register, on the petition of seven of them, an application might be made to a Judge to call a public meeting of all who have registered and designate a Justice of the Peace to preside over the meeting and make a report. Those present at this meeting were to elect five trustees for a period of five years, from those registered, and the Trustees in turn were to elect their officers, namely, a President, Secretary-Treasurer. The Prothonotary was to keep a record of all these transactions from time to time.

The Trustees were given power to acquire in the District immovable property, not to exceed five acres, and to erect and maintain a cemetery, synagogue and residence for the Minister, and then the Corporation could keep a register of Civil Status.

All Ministers of the Jewish religion in the Province had to just ~~obtain~~ on petition a license to act as such from the Governor-General, after which, they could keep a Register (in duplicate) of all marriages, births and deaths, in which they officiated, of any persons professing the Jewish Religion, which they were obliged to register. The petition of the Minister was to be signed by the President and Trustees of the District. These registers, and extracts from them were to be legally recognized. (1)

In regard to the Register of Civil Status, the legislation was similar to that under which the Minister of Protestant denominations not being of the Church of England or of Established Chancery of Scotland officiated. (2)

In view of the above legislation, it became necessary for the Jewish congregation to reorganize in accordance with the act. A new synagogue was erected on a lot purchased in 1835 and inauguration took place in 1838. The proceedings under the Act of 1829 are fully set out, for the first time, in the appendix, (3) and give an interesting history of the Jewish community, as such. The leading Jews of the time signed the register even to the latest times. Besides the names given in the documents a few pages of other Jewish signatures are contained in the original book of entry.

On September 11, 1832, Alexander Hart, Moses Hudah Hayes, Isaac Valentine, Isaac Aaron, and Aaron Philip Hart, and Eleazar David David, petitioned under the Act to convene

1. See, Rhinewine, Sack & Sperber for fairly complete summary of the Act; original act referred to as well.
2. Sperber, Jew in Canada supra. ? /L.?
3. Pages 261 following practically a complete record of these proceedings as they appear in the Register of Record in the Prothonotaries office, Montreal, Quebec--Court Archives Montreal.

a public meeting of all persons registered within the District under the presidency of a Justice of the Peace.

On the 12th of September, 1832, George Pike, one of His Majesty's Justices of Kings Bench ordered a meeting to be presided over by Austine Cuvillieres, a Justice of the Peace.

On the 6th of September, 1837, another petition reciting trustees were appointed at meetings of October 12th, 1832, was presented to elect new Trustees. This meeting was ordered for October 10th, 1837, and at the meeting, Moses Judah Hayes, Isaac Valentine, Benjamin Hart, Jacob H. Joseph, and Aaron H. David, a physician, were appointed.

To fill the vacancy created by the resignation of Benjamin Hart and Aaron Hart David, a public meeting was convened for July 31st, 1840 and Samuel Hart and Theadore Hart were appointed. This meeting was certified by the Joint Prothonotary and also the fact that David Piza had duly enregistered his name, age and profession minister, in the Register.

By a certificate of the Governor-General, Right Hon. Charles B. Sydenham, David Piza was granted a license under the Act to keep register of all births, marriages and burials in Montreal (1). A meeting was called on October 3rd, 1842, but evidently did not take place, as on November 28th, 1842, a Petition was made asking for a meeting and stating that "there are at present no Trustees to represent persons professing the Jewish Faith in this City."

This would seem to suggest that this body was the legal representatives of all Jews, and recognized by

1. See, Appendix, p. 271.

the law as such, but not for the Province, as appears by the provision for other Registers in Three Rivers, Quebec. (1). A meeting was called for January 5,1843, by the Chief Justice and Henry Solomon, Benjamin Hart, E. J. Joseph, M. Samuel Davis, advocate, Samuel Benjamin were elected Trustees. On July 10th, Mr. Meyer Solomon took the place of Benjamin Hart.

A meeting was held on February 25, 1850 and Goodman Benjamin, Aaron Hart David, Alexander Levy, John Levey and Simon Hart were elected trustees.

The minutes of these meetings cease and are followed in the original entry book by documents (which are known as the Aaronson case.

In the meantime a synagogue had been organized, composed of English, German and Polish Jews which desired to worship according to the Ashkenazic Ritual. They were incorporated in 1846 as a separate congregation (9 Victoria Chap. 96) in name and only in the late fifties was the synagogue truly started, the corner stone being laid on July 12th, 1859 -- dedicated on May 22nd, 1869. (2)

By The Act of Incorporation, which Act amended and the act of 1829, recited the separate Congregations of Portuguese and German and Polish Jews in Montreal. It enacted that any ten members of each might elect officers and record proceedings, the said officers of each congregation to be a body corporate and public; sue and be sued; contract and be contracted with; hold real estate and property movable or immovable not exceeding £400 of yearly value, free and clear of all charges and have perpetual succession; induct a Rabbi, etc., but the Rabbi need not obtain a license from the Governor. There was also provision for holding legacies, gifts, and bequests made for use or benefit of either Congregation.

1. See, original Act, see, p. 71 supra.
2. For copy of Act see Appendix, p. 249. For history of Synagogues see, Sack, pp. 50 & 51.

This act repealed so many of the provisions of the Act of 1829 as were inconsistent with it.

There were now two corporations allowed by law and friction at first arose between them especially over the burial ground which belonged to the Community, until one was acquired by the later congregation as well. It may be said at this point that one Congregation no longer represented the Community, but two.

The Ashkenazic Congregation grew in importance receiving bequests especially for the School, especially one in 1865 of £800 from David Moss, also a larger one in 1869 from Edward Moss. David Moss bequeathed, as well, a sum to provide for prizes yearly to the Sunday school.

In spite of general harmony in the community, a dispute arose in the early sixties, which went to Court. This case arose over the expropriation of the land of the old cemetery to the removal of the bodies to another. The Portuguese Congregation co-operated and agreed to remove the bodies at $6.00 each. As the City paid for the expropriated land which belonged to the Jewish Community, the dispute arose over the share belonging to the German synagogue. They sued the Trustees of the Sephardic Congregation, and on August 24th, 1864, the Court gave a verdict in favor of the former.

Each of the Congregations went on their respective ways until the matter of the Community Status arose again. In the meantime the Temple Emanuel, at present the only Reformed Congregation in Montreal, had been incorporated as a separate Congregation.(1).

On August 2nd, 1889, a group of Jews of Montreal made an exparte petition desiring to establish a Jewish congregation in Montreal to obtain the advantages of the Act of 1829, and asked for a public meeting to appoint the Trustees.

1. 46 Victoria, Chap. 67 (1883) Statutes of Quebec.

The Judgment of Mr. Justice Pagnuella (1), Judge of the Supreme Court in regard to this application, held that the Jewish Congregation, having been formed in the City of Montreal under the Provision of the Act of 1829, no other congregation could be formed.

On the 21st day of September, 1889, the same petitioners set out that no trustees had been elected under the act of 1829 since the 25th of February, 1850 and that those who had been appointed then had either been deceased or domiciled and residing out of Montreal and the Dominion of Canada, and they desired an election under the provisions of the said act.

Lewis Aronson, one of the petitioners deposed to this fact, and Mr. Justice Pagnuella, on the 25th of September, 1889, ordered that all persons professing the Jewish religion duly enregistered be convened to appoint the trustees. Up to this time the leading citizens had continued to register their names in the Register.

By the report of the Justice of the Peace who convened the public meeting which was held on October 29th, 1889, it appears that protests were made by the members of both the Portuguese and German Congregations against the election of such trustees and under protest, five members, including those of both congregations, were nominated. The petitioners, however, nominated five of their own members. Under a similar protest by the petitioners, and in view of the petition, the matter was referred to the Hon. Judge Pagnuella for instruction. The objection of the petitioners as set out in the documents attached in the appendix, was that the first nominees were members of the two congregations and had no right to take part in the proceedings, because they were constituted congregations under a special charter.

1. Exparte Aeronson 18 Revue Legale, p. 55. For the following proceedings see Appendix, p. 261, following.

(9 Victoria, Chapter 96) (1) and were therefore excepted from the duties and rights of the Act of 1829 and could not vote or take part. They claimed that by their own admission they alleged that they were members of the congregations and intended to act as trustees, and that their members had a right to vote. The petitioners asked for damages, costs, and loss, etc.

The note of protest signed by those of the two congregations recited that the Act of 1829 provided for the formation of only one Jewish Congregation for Montreal and its provisions were for the calling together of all persons professing the Jewish religion to elect one single group of trustees to represent the Jewish Community of Montreal, but that this became insufficient and inapplicable because the Jewish community of Montreal became divided into more than one religious congregation. They stated also that another congregation, Temple Emanuel, has been incorporated and that the Acts of Incorporation provide for the election of separate Board of Trustees for each.

They mentioned that by the Act of 1846 (9 Victoria, Chapter 96) the Act of 1829 was only repealed insofar as it was inconsistent with this new act, and that among the enactments not repealed were the old provisions for one single Board of Trustees to administer and manage congregational affairs of the whole Jewish community.

In the last paragraph, they stated that the three incorporated congregations of Montreal Jews have each vested interests and rights that will be interfered with if any attempt is made to elect and create under the repealed provisions of the Act of 1829, a Board of Trustees that might seem to have the power and authority of the trustees under the original act.

We can see by this that the established

1. See, Appendix, p. 284.

congregations were afraid that if the Act of 1829 were revived in its original form, the whole legal status of the Jewish Community would revert to one body controlled by a group of men outside of their own congregations, yet regulating the affairs of each of the said congregations at any rate for holding for instance the cemetery as the property of the Jewish Community which they would claim they represented. By a judgment of Mr. Justice Pagnuella on November 15th, 1889, it was held that the corporation of Portuguese Jews and the German and Polish Jew in Montreal should be eliminated in the election of the Trustees appointed to be elected at the meeting of November 19th, 1889, as being incorporated under the Act of (9 Victoria Chapter 96) and by a report of the Justice of the Peace, 19th day of November, 1889, it was reported that after eliminating the said men that those representing the petitioners had the majority of votes and were elected as the five trustees under the Act of 9 and 10 George IV.(1).

I have been unable to find out whether a congregation was really formed under this order, but I have been informed by meeting citizens of Montreal that the provision of the acts have fallen into disuse. As far as I have been able to inform myself, I understand that the reason for the whole procedure was to avoid the expense of incorporation by the petitioners. The method of incorporation has been followed in many cases by the various Jewish congregations of Montreal which have sprung up during the last years, giving in each case similar rights to appoint a minister and keeping a register, and exempting them from the Act of 1829 in regard to provisions inconsistent with their incorporation. It would seem therefore that while in theory, under the above judgment, there is only one Jewish Congregation to represent the Jewish Community, yet, in practice, each congregation is a legal entity by the fact of incorporation.

1. Appendix, pp. 287 & 288. (See, Sperber in Jew in Canada--who has evidently not seen the completed record in the Aaronson case).

In 1903 the Shar Hashomoim Congregation of Montreal, by the Act of 2 EdVIIchanged their name and repealed the former Acts including that of 1829 insofar as the terms of this Act were inapplicable (1).

STATUS OF MINISTERS

In view of the fact that there were places in the Province where Jews had not constituted themselves a religious corporation under the Act of 1829, or where they had synagogues in which the Rabbis were not authorized to keep Registers, the legislature of the Province of Quebec in 1894, by the Act of 57 Victoria, Chapter 44, amended the Civil Code by adding article 53b.

"Every person authorized to celebrate marriages or to preside at burials, who is not authorized to keep registers of Civil Status, shall immediately prepare, in accordance with the provisions of the Civil Code, an act of every marriage which he celebrates; of every burial at which he presides; within thirty days after such marriage or burial, forward the same, with a solemn declaration attesting its truth to prothonotary of the district in which the event happened."

This act shall apply to all marriages and burials that have taken place since 1860, provided the acts are forwarded within thirty days of coming to force of this act. This was assented to on January 8th, 1894.

Under the Act of 1829, decisions have been rendered by the Superior Court of this Province that Rabbis when they perform marriages, act in capacity as public officers and have to be British subjects, or naturalized and have to obtain a license from the Lieutenant-Governor of the

1. Statutes of Quebec 1902, 2 Edward VII,Chap. 85.

Province to perform the ceremony and keep Registers, and that marriages performed by Rabbis not British subjects are invalid. Several marriages were therefore annulled as the majority of Rabbis of Montreal would not come within either of these qualifications.[1] The case of Dame Klasner against Lifschitz ([2]) is in point here.

This was a case where the plaintiff desired annulment of her marriage celebrated with the defendant on the 25th of June, 1914, on the ground that a Jewish minister, Tudelson, was a foreigner and could not keep a register of civil status, seeing that he never obtained a permit from the Governor, nor fulfilled other formalities.

The Judge held that the law in regard to Jews was special as to celebration of marriages since the Act of 1829, and goes generally into the law in regard to foreigners, especially finding that a foreigner could not be a public officer, or hold any office in the Province. He added that a foreigner was never refused the right to contract marriage.

In this case, Tudelson became a naturalized subject in 1921 and the Judge, in effect, held that even if a British subject, he would have had to get permission to keep a register of civil status. At the time of the celebration of the marriage, he could not have obtained it because he was a Russian.

Discussing the Act of 1829, he said:

"In order that a Jewish minister could keep a register, it was then necessary that the congregation that he served be formed and constituted in conformity to the law prescribed and then he must obtain the license from

1. For the foregoing see, Sperber, Jew in Canada, p.463.
2. 63 Superior Court, p.117 (1925), Quebec; also Repertoire General de Jurisprudence Canadienne St. Cyr Supplement, vol. 2 under Marriage. Refers to Kaplan vs. Goldstein Questions de droit-du Mariage, p. 292 suiv, pp. 90 et suiv.

the Lieutenant-Governor permitting him to keep a register." Here, the Jewish minister did not do so and the marriage was void.

"I have had occasion to state very often that the Jews and their ministers ignore, with an almost criminal indifference, the dispositions of our laws relating to the keeping of registers of civil state".

Have I need to recall here, and above, all the Jews, the great majority of whom are business men, occupying a prominent place in commerce and industry, that the three principal facts in life, birth, marriage and death, have a decisive effect on their civil status and capacity.

He annuled the marriage for two reasons:

First - Because Minister Tudelson, who celebrated the marriage, was a foreigner to whom the law does not give the right to exercise a public office; and

Second- Because supposing even that he was a British subject, he did not obtain any permission in his capacity of a Jewish minister to keep registers of civil status and he was then incompetent to celebrate a marriage.

The head note summarized the law in the following words:

A foreign minister who is not a British subject, no matter what religion he belongs to, has not the power to celebrate a marriage in this Province, because he is not authorized by the law to exercise a public office. The Jewish minister especially, even if a British subject, being incompetent unless he has had a license from the Lieutenant-Governor, to keep the registers of civil status, likewise to perform a marriage in this province.

The legislature of Quebec passed an Act, 15 George V, Chapter 161, (1925), validating all such marriages, but not providing for future marriages. This was "An Act

respecting celebration of marriages (assented to April 3rd, 1925). Notwithstanding any general or special law to the contrary, all marriages solemnized in the Province of Quebec, prior to the coming into force of this Act, between persons professing the Jewish religion, shall be valid legal and incontestable, if they had been solemnized or contracted in accordance with the rites or customs recognized and admitted by the said religion and irrespective of any irregularities affecting same, and even though the officer solemnizing the marriage had not obtained a license from the Governor or Lieutenant-Governor, or had not the quality of a British subject."

This act shall apply to pending cases" -

The Civil Code, Article 130, further refers to the Jewish religion by the following provisions: (1).

"The publication of banns required by Article 57 and 58 are made by the priest, minister, or other officer, in the Church to which the parties belong, and in the case of persons belonging to the Jewish religion, on three Saturdays or holidays, with reasonable intervals. If the parties belong to different churches, these publications take place in each of such churches.

In summing up then the Status of the Community and the Minister, we can say that while the Aaronson case held that there was only one Congregation representing the community under the Act of 1829, yet we have seen how this Act was to a great extent nullified from time to time by incorporation of various congregations which has in effect lessened the scope of this Act, each incorporated group being a legal entity in itself, having power to hold lands, keep a Register, etc. Yet the Act is still in force, legally speaking.

1. See, Sperber, p.464 for summary of cases.

In regard to Ministers, we have seen that they must be British subjects and comply with the statutory enactments of the Act of 1829 before obtaining their legal status as a public officer to celebrate marriages and sign the register. Having obtained this power - he is independent of the community as such and his rights are derived from his congregation formed under the law.

STATUS OF THE KAHILLAH.

One of the branches of the Montreal Jewish Community Council is the control of Kashruth, together with its council of Orthodox Rabbis. (1).

The Community Council represents 45 to 50,000 Jews of Montreal, about 80% of the Jewish population, and it is composed of representatives and leading officials of Jewish Congregations and Associations and Organizations, representing the body of their members. The Community Council, in turn, appoints the Rabbinical Council, consisting of the Orthodox Rabbis to look after religious matters, especially Kosher meat under the authority of Hebrew law. Eight inspectors and Overseers go around to the different butchers and report to the Council a case for instance, in which the butcher sells Trefa meat, as well as "Kosher meat" and he is denounced in the Press and Synagogue. If a buthher is satisfactory to the Council, he receives a card authorizing him to sell Kosher meat under their authority and supervision. There are a number of slaughterers (19 in all) in Montreal, authorized by the Rabbis who with the Community Council are the superior body.

The first type of case of importance is concerned with whether or not a Schochet in Montreal can function as such without first having submitted to the Local Rabbinical

1. The organization is described by Rabbi Hirsch Cohen in his evidence in Kaplan vs. Falovitch ante--from original files.

authority.

The case of Rev. M. Adams against I. Tucker in the Superior Court, the judgment of which has not yet been delivered, deals with this point.(1)

Rev. Adams was employed by the defendant Kosher butchers as a 'ritual slaughterer' for them, and the question arose, whether or not the plaintiff was in a position to fulfil his duties as such, and whether the defendants were bound by the contract of hire. Ritual slaughter had reference, it was said, to slaughtering of fowl in accordance with the Jewish religion and the Defendants pleaded the Jewish law on the meaning of ritual slaughterer. They adduced uncontradicted evidence to this effect, of the Chief Rabbi Hirsch Cohen of Montreal, who has acted in this capacity during the past forty years and is in fact recognized by the Provincial authorities as the Chaplain of the Province.

The Rabbi declared that it is one of the essential laws governing qualifications of Ritual slaughterers, that they must submit to periodic examinations of their knives by the local Rabbis, and on the plaintiff's admission, it was contended his knives had not been examined, except in Windsor, at a previous time; that the Council of Rabbis were the authoritative body to abjudicate questions as to qualifications of Ritual slaughterers in Montreal.

The defence showed the harm likely to accrue to Jewish householders if the poultry was not properly slaughtered - as all cooking utensils had to be destroyed and that they hired Tucker on the understanding that he was qualified and that this was the principal cause of the contract, etc.

1. Original files of solicitor for defendants, Crestohl & Crestohl, Montreal.

The Judgement has not been rendered, and I have been unable to obtain the opposing attorney's factum. I am quoting the opinion of the Counsel for the defendants as to what he thinks this case will establish:

> "My opinion is that because the underlying principle in this case was whether or not a Shochet in Montreal could function as such without first having submitted to the local Rabbinical authority, the Judgment will be of vital importance. I believe that the Court will maintain the affirmative view because of the Jewish Law cited on this point, and, because of that, the Judgment of the Court will add power to the local Jewish Community Council and its Council of Orthodox Rabbis insofar as it will be able to control Schechita in Montreal. No stranger will be able to come to the City and usurp its functions without first having presented himself to the local Council of Rabbis and approved by it. In other words, the Judgment of the Court may firmly establish the authority of a Vaad Horabonim to control and supervise Schechita and those qualified to function as Shochtim in the City of Montreal."(1)

The next case I will mention is that of sale of Kosher meat without the authorization of the Council of Orthodox Rabbis and the Jewish Community Council. This was the case of the King vs. Kaplan and Falovitch.(2) They were butchers, not belonging to the Jewish Community Council and authorized by them or their Rabbis to put a sign in their window, who stated that they had Kosher meat for sale. The sign so used, it was alleged, stated that they were offering "Kosher Meat" slaughtered by duly qualified slaughterers appointed by the Jewish Community Council, etc., and in appearance resembled a the official sign of the Council.

A warrant was issued for their arrest and they were charged by the Rabbinical Council with misrepresenting to Jewish housewives the meat placed for sale, since the meat was not Kosher and not under the control of the Vaad Harabbonim.

Mr. Justice Marin in the Court of Sessions held that a Jewish housewife was misled by the sign, since she declared that she would not have purchased the meat if she had known that the meat sold was other than represented by

1. Letter from Crestohl to writer dated August 19,1933.
2. From original file of solicitor for Community Council, Crestohl & Crestohl, and original judgments therein.

the sign and as this was a test case a minimum fine of $25. each plus costs of court or one month in jail was imposed.

The case came under Article 406, Paragraph 2 of the Criminal Code of Canada "Knowingly publishing, etc. any advertisement to promote the sale of movable or immovable property -- containing any false statement or representation likely to enhance the price or value of such property".

In the judgment, Mr. Justice Marin stated that the "important part in this case is not the punishment of the accused, but to establish a principle, that is to say, that the rules and regulations of the Jewish religion are serious and serious above all for the Jews and the important issue was to notify the Jewish butchers that they have no right to encroach upon the law in using such sign".

In the beginning of his judgment, he traces the history of the Kehillah and states that the superior authority for determining what is Kosher, is the Jewish Community Council and its committee, the Montreal Council of Orthodox Rabbis. Another important point in the Judgment is the establishment of the fact that the important word in a sign of this nature is the word "Kosher" and that the indiscriminate and unauthorized use is a criminal offense.

The butchers appealed his judgment to the highest court in the Province and the appeal was argued in January, 1932, and after due deliberation, Hon. Mr. Justice Loranger (1) on the 1st of March, 1932, maintained the judgment of the Court of Sessions, declaring it to be false misrepresentation to advertise the sale of meat as being kosher when it was not so.

He held only meat prepared according to the in-

1. From original judgment--file of solicitors supra.

structions of the Rabbis, and killed according to the ritual, must be sold as "Kosher" and it loses its quality of Kosher when Kosher meat is placed beside non-Kosher meat. "Unauthorized or not to sell Kosher meat, the least they must do was to sell meat such as announced by them, by the sign placed in the window of their store." Here they did not have Kosher meat to sell.

This year there was a veritable "war" among the Jewish butchers of Montreal, which resulted in disastrous competition between the butchers.

This arose out of the formation of the affiliated Association of Schochtim (Agudah) to oppose and undermine the Vaad (or Community Council) conspiring with butchers to that effect.

The Schochtim had claimed certain "chazako" rights, etc. from the Vaad by whom they were employed until March 9th, 1933, by contract. They were not re-engaged because they refused to lessen the price of their services and new Schochtim were hired. They then started this new organization with the above result (1).

The matter was finally settled by a Board of Arbitration agreed upon to avoid the disruption of the Kosher meat business and the majority and minority report appear in full in the appendix. (2).

The majority report ruled that the Vaad " has the sole and absolute rights of administration and supervision in all matters pertaining to Kashruth and schechita." This, of course, would be binding on the parties and could not be considered as law otherwise.

The law, therefore, has yet to be settled in regard to the supremacy of the Kehillah in the above matters, especially as to an individual schochet. It would seem that in one judgment at least the superior

1. See, Majority report, Appendix, 329.
2. Pages 329 & 30, Appendix.

authority was considered, the Kehillah, but it must be remembered that the point really decided was on the basis of misrepresentation. Otherwise, it would be well to delay passing an opinion until the judgment of the Tucker case is given.

STATUS OF ARBITRATION BOARD

The Local Arbitration Board was founded in 1921, and offshoot of the Montreal Jewish Community Council which was founded in the same year for the discussion of Jewish Community problems, such as Kashruth, etc. The first Chairman of the Board was Lyon W. Jacobs, K.C. who was succeeded by Leon D. Crestohl then a graduate of law of McGill University, and now an advocate, who is the present Chairman. (1)

The insignia of this Board reads:

צדק צדק תרדף
אלך אחר בית הדין ?

This Board is also a Jewish Domestic Relations Court, the first court of this nature in Montreal, a continuance of the Jewish ancient communal institution, "The Mispath Hadin", "A Court of Arbitration".

The applications for adjudication are filed at the office, with a deposit of $2. and the contracts of submission for a decision to the Court must then be signed by both parties.

The contracts read as follows:- "The parties hereby agree and oblige themselves to respect whatever decision the Arbitration may render, and this as if the decision were of the Superior Court of this District. The costs of the Arbitration shall be borne by the parties, as the arbitrators shall decide."

1. Article on Jewish Arbitration Court, Montreal Star, Feb. 27, 1932; also article on The Jewish Court of Domestic Relations by Edith M. Luke--The New Outlook, June 1, 1932. See, also Report of Board 1933--Appendix, p. 327.

Three judges sit in Judgment, one a Rabbi, one a lawyer, and one a layman. The hearings are private.

In the latest report, which is appended (1), Mr. Crestohl states that within the last fifteen months, 216 applications were filed and the Court had heard 159 cases and rendered 159 judgments. In the nine years of its existence 1500 cases have been heard and adjudicated. There have been about 300 cases heard per year (287 for the fiscal year ending June 30th, 1931.

A variety of cases have been thus adjudicated, saving the good name of the Jewish Community in many instances, and the avoidance of unnecessary publicity among the non-Jewish community. The Court itself received the commendation of the Montreal Star, February 27th, 1932, and the New Outlook, on June 1st, 1932.

These cases include those involving "Sholam-bais", Shatchonas, hasogath gevul, "Chazakes" disputes between congregations and chazonim, claims for commission, partnership, questions of mortgage, desertion, insurance, personal insult, purchase and sale, and questions of morality involving the reputation of men and women in the community, and general domestic difficulties; the Board adjusted several disputes between congregations and their members, and other syndicates and organizations and their members. In short, they included religious, business and domestic disputes.

Many examples of cases might be given. There was one case for instance where a sister lodged a criminal complaint against her brother, both in their late thirties, and the court satisfactorily dealt with it.

1. See, p. 327.

Not infrequently judges of the Superior Court refer intricate cases involving problems of Talmudic origin, for settlement, and Gentile and Jew plead their cases here.

One such case was referred by the Superior Court. It was a case in which a certain Voskobonick sued the Shomrim Laboker Synagogue. His contentions were that he was unlawfully dismissed from membership and claimed damages. The case went to the Superior Court and the Court of Appeals, and the Synagogue finally lost.

During the suit, the Judgment of the Superior Court referred it to the Arbitration Committee. The learned counsel appeared. Both Jew and Gentile, pleaded their cases but judgment was not rendered due to the fact that the parties did not complete their respective cases and negotiations for settlement were commenced. This evidently did not materialize and the parties continued before the Courts. (1).

The question remains, what is the legal status of this Board. It would seem that in cases where the arbitrations were referred by the Courts under written consent of the parties, the judgment of the Board would be enforced as any other arbitration board. In the ordinary case of submission I have the opinion of Mr. Crestohl in the following words:

"The legal status has never been tested, and I am of the opinion that a Contract for Submission to Arbitration, as signed before the local arbitration Board, will be maintained by the local Courts." (2).

1. Letter Crestohl to writer, August 19,1933.
2. Ibid.

IV

EDUCATIONAL RIGHTS OF JEWS IN LOWER CANADA (Quebec)

It is important to bear in mind, in discussing the history of Jewish Educational rights in Quebec, about which during many years so much controversy has arisen - - that guarantees to the Jews of political, religious and civil rights referred to in the chapter on Political rights by the Statutes mentioned therein (1) became a fundamental policy of the Legislature, and it was consistently argued in the course of the discussion on the Educational problems, that these statutes and laws should be taken into consideration in discussing and interpreting the law involved (2).

It is further important to discuss the various school laws before the Confederation of Canada in 1867 because the British North American Act, (3) which is the constitution for the various Provinces in Canada, and gives them the right to legislate, contains the clause about which both sides constantly referred as the basis of the Constitutional Guarantee of school rights.

Section 93 of the Act provides:-

In and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of person have by law in the Province at the Union;

(a) All the powers, privileges, and duties at the Union by law conferred and imposed in Upper

1. See, especially Act of 1832 and that of 1851.
2. See, Factum of majority Jewish Commissioners in King's Bench (Appeal) Quebec, p. 12. Also, opinion of Wallace Nesbitt, K.C., p.153 in Factum Supreme Court of Canada of Appellants Michael Hirsch & Samuel W. Cohen majority Jewish Commissioners on appeal.

Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec;

(3) Where in any Province a system of separate of dissentient schools exists by law at the Union, or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any Act or decision of any Provincial Authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education; etc.

Section 93 of this Act confers their exclusive plenary power respecting education on the Provincial Legislature, subject only to subsection 1 - which renders unconstitutional any prejudicial interference with the rights and privileges of any class of persons with respect to denominational school which they possessed under Quebec Legislation and the rights conferred and imposed in Upper Canada on Separate schools and Trustees for Roman Catholics up to 1867, were extended to dissentient schools in Quebec.

What then were the rights of the "denominations" before 1867. This is determined by religious belief not race or language (1). On this question the whole argument revolves. It must be remembered that Protestants would in most cases be in the minority in Quebec, and that Jews in most cases went to Protestant schools.

1. Ottawa, Separate School Trustees vs. Mackell, 1917, Appeal Cases (Privy Council), p. 69.

Two different opinions and interpretations of the law substantiated in the main by two of the most eminent legal minds and counsel in Canada (1) represent very well the arguments that have been adduced by either side from the legal point of view ~~and~~ until the matter was settled later by the Highest Court of the Empire.

Those representing one point of view, the majority Jewish opinion, tried to argue that previous to 1867 the Acts show that common schools were in existence, although dissenting schools continued to be recognized, that is a school composed of those residents in a parish of different religious belief from that of the majority. No reference was made to any particular religious belief in these Acts and the British North America Act guaranteed these rights.

The Protestant viewpoint held that previous to 1867 the Protestants had the most complete control, both financial and pedagogic of their own schools and could not be called upon to share that control with members of any other religion; (2) -- that common schools had reference to Christian Schools. In short, there were two main classes in the Province in regard to schools, Protestants and Roman Chatolics, the foundation of each class was the Christian religion, and for school purposes, no other religious belief existed.

The first legislation in regard to Education after the union of Lower and Upper Canada was in the year 1841 as a result of the desire of the Protestants who were the religious minority. Previous to that date

1. The late Eugene Lefleur K.C. and the late Hon. Wallace Nesbitt K.C.--see pp. 143 to 160 of Factum Supreme Court of Canada of majority Jewish Commissioners of Special Commission of Education in Montreal.
2. Factum--Lefleur, p. 147.

it is clear in Province of Quebec, purely common school existed by virtue of Statutes 9 George IV, L.C. Chapter 46, 1829; 10 George IV Chapter 14, 1 William IV, Chapter 7; 2 William IV Chapter 26 L.C. (1832). See also 41 George III (1801) Chapter 17. (1).

These statutes recognized the obligations of the State to educate its children, no question of religious belief or of religious unbelief entered into the consideration of the Legislators in enacting the Statutes and no rights or privileges with respect to denomination schools (2).

That there was an"educational problem" even at this time, in regard to the question of religious teaching in the schools, appears from a letter sent by Moses Hart of Three Rivers to the Governor at Quebec - probably the first discussion on the school question:

" Three Rivers, May 10, 1839

Sir:

I did myself the pleasure of making known to you, my reasons of establishing an Academy, at this place for the education of the youth of both sexes, presided by a master and four or five professors of both sexes, where the youth would be taught the common and higher branches at 5/ per month, for an English or French education, and 7/6 per month for the extra branches.

No religious prayers to be used in the Academy -------.

I do not mean that children should be divested

1. Wallace opinion supra,p.154; Greenshields,J. on Appeal (Quebec)--judgment p. 200 of Factum S.C. of C; Finsler vs. The Protestant Board of School Commissioners,p.376 (23 Superior Court (Quebec) 365) 1903.

2. See, Factum of Hirsch & Cohen (Appeal--King's Bench), Quebec,p. 5.

of religious instruction, this could be given them at some other place as their parents thought proper, but to make the academy encouraged by every sect no particular prayer should be used. Sound morality, virtue, and a respect for the Great Creator would be ---------". (1).

By the Act of 1841 (4-5 Victoria, Chapter 18) "An Act to repeal certain Acts therein mentioned and to make further provisions for the establishment of maintenance of Common Schools throughout the Province", dissentient shcools and a separate Board of Examiners were first created, authorized to have common schools of their own and to have their own trustees. They were established for those professing religious faith different from the majority of the inhabitants of the township or parish in which they were resident, to be maintained out of a general fund.

There is no reference to the particular religious faith of the "majority or minority" whether Catholic or Protestant or otherwise, the preamble of which read "Whereas the establishment of common schools for the instruction of youth is of paramount importance, etc." The Board of Examiners in the towns and cities, however, were to be one half Protestant and one half Catholic, but the whole Board was to have jurisdiction over schools attended by those of both faiths. In schools where Protestants attended alone, the Protestant group was to have control, and similarly in regard to the control of the Catholics in cases where the schools were wholly Catholic.

1. Can. Archives "S" series, Internal Correspondence under "Moses Hart."

In 1846-9 Victoria, Chapter 27, Section 2, recognition of the dissenting schools was continued but in regard to Montreal, Section 41, allows children to attend school in any part of the city, making in effect the whole city into one school district.

The Act provided for the administration of school matters by separate boards, Roman Catholics and Protestants respectively, and each controlling finances, teaching staff and course of studies, etc.

In Montreal and Quebec, however, a commission consisting of 12 commissioners, 6 Roman Catholics and 6 Protestants were to form two corporations, with payment out of a general fund to the two boards of commissioners. The Act provided for a Board of Examiners, also half Catholic and half Protestant.

Mr. Wallace gave the opinion[1] that this did not mean the schools were to be denominational, rather the opposite, that reading section 41 with the above, the examiners were to be qualified in a certain way, but the Schools were free to all and the Boards were an Administrative machinery to distribute money, etc., but as to education, they were subject to the control of Council of Public Instruction, the members of which were not appointed by reason of religious belief. Not until 1869 were members of this Council to be either Catholic or Protestant.

The Act of 1846 was amended in 1849 by 12 Victoria, Chapter 50, which expressly enacted "That children of from 5 to 16 years of age residing in any school district should have the right to attend the school thereof upon payment of the said monthly fees.

Section 6 provided:

"That the clergymen of all religious denominations

1. Factum S.C. of Canada supra, p. 154.

in each school municipality, shall be eligible to be such commissioners without any property qualification"?

By 1856 19 Victoria, Chapter 14, section 5, dissenting schools could for the first time fix rates; there were religious qualifications for examiners but no such qualification for members of the Council.

Section 6

"After the 1st of July 1857, any female not being a member of any religious community, who shall desire to become a Teacher in a common school shall undergo the required examination before the Board of Examiners." No mention was made of Catholic or Protestant.

22 Victoria, Chap. 52, 1859, continues the recognition of dissenting schools and powers of taxation, and the religious qualifications of Members of the Board of Examiners. (1).

In 1861 Con Statutes of Lower Canada, Chapter 15, the same definition of dissentient schools was continued, the minority as opposed to the majority, but no reference to any particular belief. In Montreal, the same law of School Commissioners as berfore was in fone and by sections 131 to 134 school rates as such do not exist, and the moneys payable by the City in proportion to population, were directed to be employed for the purposes of common schools (section 131). By section 129, the whole City of Montreal is to be considered one municipality and children from any part of the City may attend any chool, no reference being made to religious belief.

Section 138 (Interpretation section) provides that the expression common school shall apply to a

1. See, Act of 1859,sec.1.

dissenting school as the Statute had previously provided for any child attending any school. (Section 66).

The Council of Public Instruction, section 21 and following , were sections in regard to the cure' priest or officiating minister having the right to select books in reference to religious and morals for his own faith, thus religious matters and management is separated . The officiating minister is a general term and/general conduct of the courses remains with the Council. (1). The Protestants considered that these instructions gave them complete control over their schools. The Jews claimed that in the cities there were only common schools.

In the act of 1866 we may note that outside of Montreal and Quebec, a school commissioner may be a (sec. 36) clergyman or other person resident in the municipality.

Section 10, subsection 3, allowed any person to be a teacher, if he produced a certificate of character signed by the Minister of his own faith, and by at least three school commissioners or Trustees of the locality in which he resided.

The foregoing from the Jewish viewpoint may be best summarized by the opinion of Mr. Wallace Nesbit:-(2)

"The only denominational rights or privileges existing in any class of persons in 1867 was the right to form a dissenting school where a religious minority complied with the provisions of the Statute, but so far as Montreal was concerned, the only right was to regulate the books relating to moral or religious teaching."

"It might be argued that the fact that school commissioners were designated as being Catholic or

1. See, Consolidated Statutes of Lower Canada, 1861, sec.27, chap. 15.
2. Factum S.C. of C., p. 157.

or Protestant would, if the nomination of others were made to the Board prejudicially affect a class of persons with respect to denominational schools, but as the right existed for any child to attend any school, the general teaching of which was to be defined by the Council of Public Instruction, and as the right to moral or religious teaching was proved to any sect, I think it is clear that a change merely in the class of persons to serve on the Board of Commissioners for the carrying out of the Act would not be a change prejudicially affecting any right or privilege with respect to denominational schools which any class of persons had by law at that time."

In 1869 after Confederation, the Legislature of Quebec, for the first time, defined that religious majority and minority refer to Catholic or Protestant. Section I establishes that the Council of Public Instruction is to be composed of Protestant and Catholic members, and to be divided into two committees. (1).

In Montreal and Quebec the taxes from real estate was put into three panels:

1- property of the Roman Catholics;
2- property of the Protestants -
3- the neutral panel.

The latter being divided in proportion to ratio of population. Later in 1870 the Jews could pay either into one or two, and later the whole Jewish tax was paid into the Protestant panel as the Jews attended the Protestant schools. As time went on the rate of the neutral panel became the highest, the Protestant next and the Catholic panel the lowest.

The Pinsler Case in 1902 then arose. The Protestant Board refused a Jewish child a free scholar-

1. See, Act of 1869, sec. 38 & 1. 32 Victoria, chap.16 (1869) Statutes of Quebec.

ship into High School, which he had won, under one of their regulations, on the ground that his father was only a tenant and not a Jewish proprietor paying taxes into the Protestant panel, who alone had rights in Protestant schools. This case was appealed to the Court and the judgment of Mr. Justice Davidson (1), on the basis of the Act of Education, 1899, held that there were no longer common schools in Quebec but that they had been superseded by the separate schools of later legislation, (i.e. after 1841), having for their basis that the whole population of this Province stood either Roman Catholic or Protestant; notwithstanding the indisputability of the constitutional maxim of religious equality among all citizens, this did not apply to school law and upheld the commissioners. Judge Davidson held/that Jews in effect did not have school rights in Protestant Schools. He urged the Legislature to solve this pressing problem, as there were over 10,000 Jews in Montreal, many of them paying taxes.

In view of the great furore in the press and elsewhere, that this judgment caused, depriving Jews of school rights in Montreal, the Protestants, not wishing to see this great injustice done, entered into conference with leading Jews.

Resolutions:

At a meeting of the Protestant Board of School Commissioners on/the March 2nd, 1903, following resolutions were passed, later referred to in the Act of 1903, hereinafter mentioned:

"WHEREAS, an action has recently been instituted against this Board by certain Jews, and as a result the judgment has in substance stated that by law the Jews have no rights in the public schools of this

1. Pinsler Case supra.

Province, either Roman Catholic or Protestant; we hereby declare our opinion that this glaring anomaly and injustice which deprives so large and respectable an element of our population as the Hebrew people of their rights as regards elementary education should be removed.

Further, we declare our readiness to co-operate with our Jewish fellow citizens in seeking such equitable remedial legislation as will remove this unjust inequality. At the same time we must call the attention of our Protestant constituents to the danger there is that their w rights may be imperilled while the wrongs of the Jews are being rectified. If the non-Christian elements of the community should become a charge upon the Protestant Board of School Commissioners, while the revenue from them is so small, a burden will be imposed upon us which will seriously prejudice the excellent school system which for some years we have been laboriously striving to establish.

"If the enactment be proposed that all citizens who are neither Protestants nor Roman Catholics have the right to send their children to whichever system of schools they choose, provided always that the school taxes of such parties be distributed to the two systems according to school attendance, we cannot object to the equity of such a remedy. At the same time, the creation of such rights, while perfectly just, does not bring to this Board the relief it so urgently needs. It simply means that the financial embarrassment heretofore felt from this cause will continue. Indeed, it is morally certain that with Montreal as a seaport of growing importance there will be landed here from Europe an

increasing number of people of various races, necessarily of limited means, who, it is morally certain, will be to a great extent an educational charge upon this Board. In the absence of the single system of public schools which generally obtains on this continent this constitutes an unjust inequality to our prejudice.

At the same time we hereby readily declare our willingness to educate the children of all citizens who may come to us, whatever their race or religion, provided we have the means to do so, and consider that necessary steps be taken at an early date to secure the necessary revenue for this purpose." (1)

This resolution led the way to the passing of the Act of 1903, which was then passed and assented to on the 25th of April, 1903. This Act is important enough to be quoted in full as it was the so-called "Magna Charta of Educational Rights of the Jews in Quebec" ----

"Whereas persons professing the Jewish religion claim the right to have their children received and educated at the school under the control of the School Corporations established by law:

Whereas, the said persons have hitherto sent their children to Protestant schools almost exclusively;

Whereas, the Protestant Board of School Commissioners of the City of Montreal, which is the municipality chiefly interested, refuse to acknowledge any obligation to receive in the schools under their control of the Jewish faith, whose parents are not proprietors of immoveable property subject to taxation for the benefit of the said schools, and the validity of the said pretension has been judicially established;

Whereas, the Protestant Board of School

1. Factum S.C. of C. evidence of Mr. Creelman, Chairman of Board of Protestant Commissioners, pp.502.5 & 6.

Commissioners of the City of Montreal have, by resolution, expressed their consent that the above mentioned difference be settled in the manner set forth in the following provisions, and;

WHEREAS, it is expedient to prevent similar difference from arising in other localities in the Province;

Wherefore, His Majesty, with the advice and consent of the Legislative Assembly of Quebec, enacts as follows:

Any provision to the contrary notwithstanding, in all the municipalities of the Province, whether governed as regards schools, by this title by special laws, or by this title and by special laws, persons professing the Jewish religion shall, for school purposes, be treated in the same manner as Protestants, and, for such purposes, shall be subject to the same obligations and shall enjoy the same rights and privileges as the latter.

In every municipality in the Province, persons professing the Jewish religion shall pay their school taxes to or for the benefit of the School Corporation in such municipality which is under the control of the Protestant Committee of the Council of Public Instruction, and if there is no such Corporation, then to the sole School Corporation existing therein.

In every municipality in which, for the purpose of imposing and collecting the school tax, the immoveable property, belonging to persons professing the Jewish religion is entered in a statement comprising the immoveable property of persons who do not profess either the Roman Catholic or Protestant fiath, the immoveable property belonging to persons professing the Jewish Religion, shall be omitted from such statement and be entered on the state-

ment comprising the immoveable property of persons who are of the Protestant faith.

Every provision in any Act, whether general or special, conferring upon persons of the Jewish religion the right to have their immoveable property entered upon any other statement than that on which the immoveable property of Protestants, is entered, is repealed.

Whenever under the law applicable to any municipality, the moneys arising from school taxes are divided between the Roman Catholic School Corporation and the Protestant School Corporation, in the relative proportion of the Roman Catholic and Protestant population, persons professing the Jewish religion shall be counted as Protestants.

In every municipality in which the grant annually devoted by the Legislature for public schools is to be divided by the Superintendent between the Roman Catholic School Corporation and the Protestant School Corporation, in the relative proportion of the Roman Catholic and Protestant population of the municipality according to the then last census, that officer shall include among the Protestants, the persons who, according to the then last census, professed the Jewish religion.

After the coming into force of this Act the children of persons professing the Jewish religion shall have the same right to be educated in the public schools of the Province as Protestant children, and shall be treated in the same manner as Protestants for all school purposes.

No pupil of the Jewish religion shall, however, be compelled to read or study any religious or devotional

books, or to take part in any religious exercises or devotions, to which the father, or, in his default, the mother or tutor or person having the care or maintenance of such pupil, shall object.

This Act shall come into force on the day of its sanction.(1)

Mr. E. Lafleur, K.C., whose opinion of the law was unfavourable to the Jewish section, and who considered the Act of 1903 unconstitutional, said:"It seems too clear to require any argument that the Quebec Legislation of 1903 effected a complete revolution in the status of the Protestant Community with respect to school matters, and compelled them to receive on a footing of equality all those professing the Jewish religion. This legislation deprives them of the undivided control of the finances which may be allocated to the Protestant Board for school purposes and of their former absolute autonomy with respect to the management of their schools, the choice of teachers, the choice of books and the admission of pupils." The Act was thus an infringement of the Protestant rights existing by law at the Union which was prejudically affected by the Act of the Quebec Legislature. In spite of the voluntary agreement of Jews and Protestants which this law merely put into effect, he considered that they could not legally assent to this legislation as it was ultra vires of the Provincial Legislature. (2)

Much discussion took place later as to the intention of the Protestant Board in regard to this Act, many believing that the Commissioners had in mind the <u>education only</u> of Jewish children on the same terms as Protestant children, and that this was confirmed by the resolution above quoted.

1. Quoted at length in Crestohl, The Jewish School Problem, pp. 5 & 6; 1903,Quebec 3 Edward VII, chap. 16.
2. Lafleur,opinion,Factum S.C.C.,p.147.

But the statute seems to have given the result expressed by Mr. Lafleur.

In 1906 an attempt was made by the Jewish citizens to change the whole system in Montreal and to have eight Roman Catholics, 8 Protestants and 8 Jews constitute the School Board (1), elected by the people, but Mr. Goldstein states in his article in the Jew of Canada (2) that it was done by non-Jews and that in the interpretation clause of the Bill a clause was put in to the effect that the word "Protestant" shall include persons professing the Jewish religion. The Bill was opposed by both school boards and was defeated. In 1909 a similar Bill met the same fate.

According to Mr. Rexford, in 1914, 1915 and 1917, very strong efforts were made to incude the Roman Catholic majority in the City Council to disregard the pronounced opinion of the minority and to appoint Jewish representatives on the Protestant Board (3).
He said the City Council formally referred the matter to its legal advisers and the latter claimed that such appointments would be illegal.

An Association was formed in 1915 and 1916 to consider the problem on one occasion when it was necessary to present their views to the City Council; over 75 of the leading citizens of Montreal waited upon the City Council and presented them with reference to the suggested appointment of a Jewish representative on the Protestant Committee. Petitions were signed all over the City and sent into the City Council. (4).

1. Evidence of Rexford then Chairman of the Council (Protestant) of Public Instruction, Factum S.C.C.,p.93.
2. Goldstein, The Jewish Question in the Schools of Quebec, Jew in Canada, p. 497.
3. Rexford,supra, pp. 93 & 94.
4. Rexford, p. 96. The evidence by Rexford was not contradicted by the Jewish witnesses. Cf. Crestohl supra,p.7 that in 1912 a committee of Jewish parents thought Jews be given representation under the Act of 1903.

Generally, the Act of 1903 worked out fairly satisfactorily, but friction arose from time to time, especially due to the increase in the number of Jews attending school, and there were other difficulties between the two Bodies, especially as regards to the employment of Jewish teachers.

The evidence of Mr. Creelman (1) representing the Protestant Board (during the sittings of the School Commission in 1924) gives the history of this employment. Three Jewish teachers were employed by the Protestant School Board for the first time in 1913. Prior to then, not one had been employed. The number gradually increased from 1913 until 1923 when 70 Jewish teachers, out of a total of 1000 teachers, were in the employ of the Board, and on October 2nd, 1923, this was still the number. There were no Jewish teachers in the high schools. (2). In 1922 there were 12,000 Jewish children compared to about 19,000 Protestants. It should be noted that the Jewish population of Montreal had increased to 60,000 in 1922, and the shhool tax had been increased as well. The Jewish representatives who gave evidence later claimed that Jewish teachers had taken their training, but found they were unable to secure positions, inferior Gentile teachers being given the preference.

Mr. Creelman stated that there was a very serious diversity of opinion in 1913 as to employing Jewish teachers and read an extract from the minutes of the Protestant Board of School Commissioners held June

1. Creelman, Factum S.C.C.,p. 101,following.
2. Cf. 1903, 1,775 Jewish children attending Protestant schools as against 6,610 Protestants. In 1924 Jewish students numbered 11,557, Protestants 18,851--Creelman, p. 5.

12, 1913:

"The Committee of School Management submitted as its report the Minutes of its meeting on May 9th, embodying the following motion and amendment;

Moved by Rev. Dr. Scrimber, seconded by Alderman Robinson:

That the Board reaffirm its adherence to the fundamental principle which was recognized by the Jewish community in 1903 when the existing arrangement was made under which the Board assumed the duty of educating the Jewish children resident within the Protestant School Municipality of Montreal, viz, that the Protestant school system remain unchanged in respect to its distinctive religious character and constitution, believing that any change which would have the ultimate effect of destroying the Christian character of the administration would be opposed to the conscience and justment of the Protestant community of Montreal and of the Legislature of the Province.

But having taken the opinion of the Counsel, Messrs. Greenshields, Greenshields and Languedoc, that it is legally within the power to appoint Jewish teachers to its staff if it sees fit to do so, and having regard to the large and increasing number of Jewish pupils in its schools, the Board expresses its willingness to consider applications for employment from Jewish women teachers who are otherwise duly qualified according to the law of the Province, reserving to itself, as is both its right and its duty, full freedom of action as the circumstances of each case may appear to demand. It shall be distinctly understood, however, that where each appointment is made it shall be arranged by the Principal of the school that every Christian pupil in their classes shall receive instruction in the study of the New Testament

from a teacher of his own fatih, and shall attend the customary religious exercises so conducted.

Moved in amendment by Alderman Fraser, seconded by Rev. Dr. Young.

That this Board of Protestant School Commissioners of Montreal deems it to be its paramount duty to maintain the character of the schools under its control as essentially Christian and Protestant.

That while the Commissioners heartily welcome as pupils in those schools children who profess, or whose parents profess any other religious faiths; and while they have no desire to interfere in any way with the religious teaching of such children; they do not feel that they have any mandate or authority from the Protestant Christian citizens, whose servants they are, to modify in any degree, nor to jeopardize in any way the Christian Protestant character of the schools under their care.

Therefore, this Board does not feel justified in employing upon its teaching staff any candidates who would naturally be restrained by their own conscientious convictions from imparting instruction in Christian doctrine as accepted by the great majority of the Protestant Christian congregations of Montreal.

The Committee reported that at this Meeting the main motion had been adopted and the Amendment lost upon the following division:

Main motion; ayes, Rev. Dr. Symonds, Alderman Robinson, Alderman Ward, Rev. Dr. Scrimger; nos Alderman Fraser, Rev. Dr. Young.

Amendment: ayes, Alderman Fraser, Rev. Dr. Young; nos, Rev. Dr. Symonds, Alderman Robinson, Alderman Ward, Rev. Dr. Scrimger.

The report of the Committee was received and adopted, Rev. Dr. Young and Alderman Fraser dissenting." (1).

This resolution sums up very well what was the real cause that prevented Jewish teachers from being appointed, namely, the control by Christians.

The increase came about as a result of the war and scarcety of Protestant teachers generally who went into other occupations, as nursing, war work, banks, etc. It had always been the intention and policy of the Board, wherever possible, to fill vacancies with competent certified Protestant teachers, and that only in exceptional cases would Jewish teachers be employed. Mr. Creelman stated the Protestant parents preferred their children to be taught by Protestant teachers, and complaints were received from parents who had children in classes taught by Jewish teachers. (2).

This point of view is confirmed by a letter from A. J. Binmore on February 26, 1912, on the stationery of the Protestant Board of School Commissioners, though written in his private capacity, he being then treasurer of the School Board, in answer to an inquiry of Mr. A. J. Livinson as to what his private opinion was as to the possibility of maintaining a spparate Jewish school system, composed of those Protestant controlled schools in which a majority of pupils were Jewish. After pointing out that Protestants wouldn't have objected to the purchase of these schools by Jews, he stated - -

1. Creelman, evidence, pp. 101-102.
2. Ibid, p. 103.

"I take this opportunity of assuring you that as their action has demonstrated, the attitude of the Protestant School Board towards its Jewish fellow citizens has always been one of sympathy and good will, and that its opposition and that of its supporters to any changes which would admit Jews to its membership, contrary to the agreement made with them in 1904, is not based on racial prejudice, but upon a determination to maintain the distinctively Christian character of the Protestant school system as originally established by law."(1). This evidently remained the policy of the school board.

Other grievances arose in regard to the school question, especially in the early '20's and in the year 1924.

The Jewish parents became incensed over the fact that Jewish children were being "segregated" due to the policy of 'Division' of the Board. The policy, it was claimed, was due to the absence of Jewish pupils on Jewish holidays, when almost whole classes were depleted, thus disorganizing the school. Jewish children were therefore placed in one class room. When the Baron Byng High School was erected in the Jewish district, the Board transferred many Jewish children from the Montreal High School to Baron Byng.

The Jewish parents desired that there be no distinction made and that they wished their children to go to school with their Gentile friends; some desired to be segregated; and others refused to have their children made to feel that they were an inferior class of persons.

According to the evidence of Mr. Creelman -

1. Letter from Binmore to Livinson in latter's possession, unpublished.

the trouble arose in the more central section of the City - in the outlying portions the number of Jewish students was not great, for example:

	Protestants.	Jews
Belmont School, St. George Ward	183	14
Victoria School, St. Andrew Ward	442	40
Maisonneuve	1151	17
Rosemount School	1207 ½	9
Herbert Symonds & Notre Dame de Grace	1103	175

so that here no difficulty of holidays arose. However, between Bleury and St. Denis streets, it was different.

In Alexandra School	61	492
Fairmount	561	1025
Devonshire School	32	1285
Baron Byng High Sc. opened in 1922, had in 1924	42	848
Montreal High School	Boys 299	161
	Girls 389	99

In some of the boys' classes, a number were entirely Jewish and others Protestant, so that no inconvenience resulted.

It might be pointed out that in 1924 there were 197 school days and there are about 8 Jewish holidays.

The Protestant Board had grievances as well and desired to maintain control without interference of the Jews in accordance with their rights and complained about the havoc wrought by Jewish holidays. They feared that with the increase in the number of Jews attending the school they would have to give representation unless the matter was finally settled (1).

1. Evidence of Creelman, supra, p. 93, foll. &; also 101, foll. &; for above figures see p. 103.

As a result of these controversies, a Bill was presented to the Legislature of Quebec in 1922. Previously, the Jewish proprietors had paid taxes to the Protestant panel, at the same rate as others. Mr. Creelman stated that the figures shown to the Legislature revealed that only 40% of the cost of educating Jewish children was borne by Jewish proprietors, but it was clearly stated in the evidence that there was never any objection by the Jews to remedy this situation and thus meet the total cost of education.

The Act of 1922 which would have satisfied the Protestants entirely was strenuously opposed by the Jews for obvious reasons (1).

By the Act of 1922 which the Protestants presented, they asked that the Act of 1903 be abrogated.

(a) That Jews be classed as neutral for the purposes of education;

(b) That the taxes of Jewish proprietors go to the neutral panel;

(c) That the cost of educating Jewish children be a charge in the neutral panel at the rate of $60. per capita.

There was some discussion later as to the attempt to have this Bill passed without giving the Jewish representatives warning, but at any rate at the time a Committee of representative Jews heard of the matter and managed to check the move, and after much argument and debate, the Bill was amended through the intervention of the Prime Minister. The Jews had evidently strenuously objected to the abrogation of the 1903 Act, thus depriving

1. Creelman, p. 15.

them of the rights given them in 1903 and the opening of the way to segregation of the Jews. (1)

The Act finally adopted provided:

(a) That the taxes of the Jewish proprietors go to the Protestant panel, as before;

(b) That Jewish children be educated for the time being under the Act of 1903;

(c) The Protestant Board shall be paid, as a charge thereon, the difference for each year between the amount paid into the Protestant Board by Jewish proprietors and the cost (as calculated at $60. per capita) of education of Jewish children attending Protestant schools.

(d) The Lieutenant-Governor in Council was to have the power to repeal at any time, on and after the 1st of July, 1924, articles 3046 to 3051, inclusive, of the Revised Statutes 1909, that is the Act of 1903.

The power of repealing was at the grace of the Lieutenant-Governor in Council with the hope no doubt that some settlement might, in the meantime, be reached. (2). The Prime Minister told the Protestants that it would not be appealed until something was substituted (page 15 Creelman). This gave the Jewish community at least time to find a way out.

The Protestants in 1923 presented another Bill, not being satisfied with the first, in which they asked for the complete abrogation of the Act of 1903. They wanted the Jews classed as neutrals so as to make it clear that Jews were a separate group and that only two panels existed.

1. See, Goldstein, supra, Jew in Canada, p. 498.
2. See, Crestohl, p. 8.

The Prime Minister, however, did not support this Bill due to his promise of 1922 and the Bill did not pass, especially as all groups of the Jewish community had opposed it.

When a similar Bill was presented in 1924, the Legislature declined to pass any legislation, but the Government promised to appoint a commission to discuss and report on the whole matter. The Bill of 1924 was for the whole Province. In the draft of the 1924 Bill, they not only disposed of the Act of 1903, but eliminated the conscience clause in the Act of 1903, Page 35 Goldstein (1). Mr. Fitch later pointed out that this did not oblige the Protestants or Catholics to receive them, or on what terms. (2), but Mr. Creelman claimed later that the conscience clause would be covered in the instructions of the Protestant commission by which they were bound.

During all this time, much discussion and many meetings had taken place in the Jewish community and the press was full of comment.

The Jewish community split into several groups, later represented before the Commission and were divided according to their points of view.

This is well summarized in Mr. Crestohls pamphlet as follows:- (3)

The Jewish Community commenced to regard the problem as a serious one. Opinions differed. The Community split up into several camps, outstanding of which were two (1) The Uptown Committee, consisting of members of the Reform Temple, as well as in a large degree semi-Orthodox

1. Evidence of Goldstein before Commission,1924. Factum S.C.of C.,p. 35.
2. Evidence of Fitch,ibid,p. 21.
3. Crestohl,supra,p.8.

Jews residing in every section of the City, which favored the maintenance of the Status Quo, which means, they desired to retain the 1903 Act, but to have it enforced properly so that representation on the School Boards may be secured, and: (2) The Jewish Community Council Committee, composed of representatives of the Montreal Jewish Community Council, Council of Orthodox Rabbis, Synagogues, Societies and the Labour groups, which demanded the establishment of a Third Panel and thus establish separate Jewish Schools for the Jews. ( ).

Both these solutions were subjects of many mass meetings and heated discussions. The Press was filled daily with interviews and various solutions presented by leaders, both in Jewish and non-Jewish circles. All classes made zealous attempts to find a solution before July 1st, 1924.

In view of the fact that no common agreement was likely after meetings and conferences amongst the Jews, and with the Non-Jews as well, the Lieutenant-Governor in Council appointed a commission to investigate the questions regarding the school system on the Island of Montreal. The Order-in-Council was signed on July 30th, 1924.

The following were named to the Committee -- Sir Lomer Gouin, Mr. Aime Geoffrion, K.C. and Mr. August Richard, to represent the Catholics, Sir Arthur Currie, Mr. E. W. Beatty, K.C., and the Hon. Walter Mitchel, K.C. to represent the Protestants, and Messrs. Michael Hirsch Samuel W. Cohen and Joseph Schubert to represent the Jews.

Four sessions were held from Tuesday, September 30, 1924, to October 13, 1924, and many Jewish and non-Jewish leaders appeared to give evidence representing the above points of view or merely as private citizens.

I have referred to Mr. Creelman's evidence, Chairman of the Protestant School Board, and there was no doubt he stood upon the ground of complete control by Protestants and that no Jew should be appointed to the Protestant School Commission.

Mr. Fitch, K.C. and Rabbi Hirsch Cohen spoke for the Jewish Community Council and favored separate Jewish schools ([1]).

Mr. Garber spoke for the Workers Conference. He favoured separate schools. Mr. Goldstein was one of the Uptown group, desiring the Status quo, namely the maintenance of the Act of 1903.properly carried out, and that unless such equal rights were accorded they were too proud to have their children educated under himiliating circumstances (segregation) and they would then favour separate schools.

Mr. Weinfeld, Mr. Gordon, Rabbi M. Merritt all coincided with this view and opposing the separate schools unless it was absolutely necessary, but trying to avoid segregation if possible and beligving in the advantages of a common system for the good of all.

Mr. Caiserman showed how a Jewish separate school was possible. Mr. H. Wolofsky)Publisher of the Jewish Daily Eagle, and the Canadian Jewish Chronicle) wanted the Protestant Board to control the finances, but the Jews to control the schools in the Jewish section. Mr. L. Benjamin

1. See, Resolution of Montreal Council of Orthodox Rabbis, Crestohl,p.10. For the evidence of all the witnesses see Factum S.C.of C. also summarized as to main features in Crestohl's pamphlet.

also spoke for separate schools.

Many Protestants' opinions were expressed following Mr. Creelman's view -- Dr. Rexford, Bishop Farthing, Rev. Dr. Dickie and Rev. Dr. Smythe.

Hon. Herbert Marler denied the above represented the general Protestant point of view and considered Creelman's speech 'intolerant'. He thought the Act of 1903 could be worked out and didn't want segregation, which was detrimental to Canadian unity. This was Mr. Lightfall's view as well. Rev. Dr. Best, representing many churches, urged tolerance and thought Jews should be represented on the Board. Mr. Justice Howard of the Court of Appeal favored a Separate School for Jews.

Reports of the commission were then made. The general report was made on 27th December 1924 on the basis of the individual reports made by the Protestant Committee, the majority Jewish Commissioners, Messrs. Hirsch and Cohen, and the minority Jewish commissioner Mr. Schubert.

In the report of the Protestant Committee after generally discussing the matter and the legal opinion of Mr. E. Lafleur, K.C., they continued.

That upon the whole, and having regard to the foregoing opinion of counsel, the Commissioners have come to the conclusions, and beg to make the recommendations, hereinafter set forth:

(a) That it is not in the interests of the community that a statute of general public importance which is open to attack on the ground of its unconstitutionality, should remain in existence;

(b) That it would be useless to seek any amendment to the British North America Act.

(c) That the dual or separate school system created at Confederation should be maintained;

(d) That it is not advisable to create more panels and thus add further to the complexity of the existing system.

(e) That the reason advanced for the appointment of Jewish representatives on a central Board, such as is referred to in the foregoing paragraph, viz; "No taxation without representation" is unfounded in view of the fact that Jewish citizens of Montreal have exactly the same rights as all other citizens to effect representatives to the City Council and to the local legislature, the only bodies having the right to impose and control taxation for school purposes.

(f) That all children, irrespective of race or religion are entitled to an education inthe schools of the Province;

(g) That the attitude adopted in 1903 by the Protestant Board of School Commissioners of the City of Montreal with regard to the education of non-Catholic and non-Protestant children, was proper and recommendable and that in the interests of harmony and national unity, all the facilities of Protestant education should, insofar as circumstances permit, be continued and made available for the education of such children.

(h) That every facility should be afforded such non-Catholics and Non-Protestant children to obtain an education of a standard equivalent to that afforded the Protestant children of the Province, due regard being had at all times to the welfare and interests of such Protestant children. (1)

1. See, Crestohl, p.16; also Factum S.C.of C.
(d)

The Jewish Commissioners claimed in their report equal rights in regard to all school matters in Montreal and asked for representation and non-discrimination against the children as the Act of 1903 does if interpreted fairly, and that undenominational Committee with restricted powers which was later suggested by the Protestant Board was not sufficient or proper representation. Messrs. Hirsch and Cohen submitted a plan for the creation of a Metropolitan Financial School System and the abrogation of amendment of existing laws and the enactment of new Legislation.

Mr. Schubert , in his report as a Minority Jewish Member, recommended:

The Amendment of the 1903 Act, and to divide the Protestant panel into two parts @ - one part, the Protestant section, to control the Schools where the majority of the children attending are Protestants, and the Jewish section controlling schools where the majority are Jews, both to be adjusted yearly by a joint board -- a Central Board, to be known as Metropolitan Financial Commission -- and various other provisions, (see Factum page 183 Crestohl).

The report finally submitted to the Government by the entire Commission is as follows:

Since there is a considerable difference of opinion in these three solutions, and since the Protestant and Jewish Commissioners cannot unite and arrive at a common agreement, after a great deal of discussions and careful deliberation, the General Commission formulates the following conclusions: - -

(a) That the present two systems of education, Catholic and Protestant be maintained in the City of

Montreal, and that the Commissioners is opposed to the idea of creating a third system of education for the Jewish population of Montreal. Mr. Joseph Schubert differs in this, while Messrs. Hirsch and Cohen concur with a proviso that another satisfactory solution be found.

(b) In view of the opinions of Counsel as to the constitutionality and legality of the solutions presented, the Commissioners suggest unanimously that in order that a legal and equitable solution to insure rights of the Jews be secured, that the Government submit to the Courts of Appeal of the Province, and to the Privy Council, if necessary, the questions submitted to learned counsel of any other question relative to the issues.

(c) The Commission further recommends that the Status Quo be maintained until such time as these Tribunals will adjudicate upon the matter. (1).

As a result, a Committee of the Executive Council, following the recommendation of the Attorney General, decided to refer the certain question so the Court of the Kings Bench Appeal, pursuant to Article 5797 R.S.Q. 1909 and this was approved by Order-in-Council of February 3rd, 1925.

The matter was heard before the Appeal Court, each of the Judges giving his a separate judgment, but summed up in the opinion of the whole Court given March 11, 1925, the Judgment contained, among other things, the following: (2).

"Considering that the common or public schools of the Province of Quebec, are in accordance with the rights recognized and guaranteed by Article 93 of the

1. Crestohl, p.17, Factum S.C. of C.
2. Factum S.C.of C., p. 195, foll. ff. The questions and answers are given in Crestohl.

British North America Act of 1867, Christian Schools, whether Roman Catholic or Protestant; that the exclusive right of the Roman Catholics and of the Protestants to the control of these schools has been thus established and preserved, forever, by the British North America Act, and the Provincial Legislature in exercising its power of legislation concerning education cannot prejudicially affect such rights without exceeding its legislative authority.

Proceeding to examine each of the questions, and to enter the answer as the Court determined:

Question I: Is the Statute of Quebec of 1903, III Edward Vii, Chap. 16, ultra vires?

Answer: (Unanimous) - Yes.

Question II. Under the said Statute:

(a) Can persons of Jewish religion be appointed to the Protestant Board of School Commissioners of the City of Montreal?

(b) Is the Protestant Board of School Commissioners of Montreal obliged to appoint Jewish teachers in their schools should they be attended by children professing the Jewish religion?

Answer: (Unanimous)

(a) Yes.

(b) No.

Question III: Can the Provincial Legislature pass legislation providing that persons professing the Jewish religion be appointed:

(a) To the Protestant Committee of Public Instruction; or

(b) To the Protestant Board of School Commissioners of the City of Montreal.

(c) As advisory members of these bodies?

Answer: (Unanimous)

(a) No.
(b) No.
(c) No.

Question IV: Can the Provincial Legislature pass legislation obliging the Board of School Commissioners of the City of Montreal to appoint teachers professing the Jewish Religion in their schools should they be attended by children professing that religion?

Answer: (unanimous)

No.

Question V: Can the Provincial Legislature pass legislation providing for the appointment of persons professing the Jewish religion on the proposed Metropolitan Financial Commission, outlined in the project submitted by Messrs. Hirsch and Cohen?

Answer: (unanimous)

No.

Question VI: Can the Provincial Legislature pass legislation to establish separate schools for persons who are neither Catholics nor Protestants?

Answer: (Judges Greenshields, Rivard & Letourneau) No.
Answer: (Judges Flynn and Tellier) Yes.

Question VII: Assuming the Act of 1903 to be unconstitutional, have the Protestants the right, under the present Statute of Quebec Law, to allow children professing the Jewish religion to attend the schools:

(a) As a matter of grace?

(b) As of right?

(c) Can the Province force the Protestants to accept children professing the Jewish religion under such conditions?

Answer:

(a) (unanimous) Yes.
(b) (Judges Greenshields, Rivard and Letourneau) Yes. (save the distinctions and reserves indicated in the Notes of Judges Rivard and Letourneau). (Judges Flynn and Tellier) No.

(c) (Judges Flynn, Tellier & Rivard) No.
(Judges Greenshields & Letourneau) Yes.

Quebec, March 11th, 1925.

R. A. E. Greenshields,
JUDGE PRESIDING.

The appeal to the Supreme Court of Canada was filed on April 20th, 1925 by Messrs. Hirsch and Cohen appellants and counsel appeared before the Court representing the Appellants and the Catholic Board, Protestant Board, and Mr. Joseph Schubert and the Attorney-General to protect their respective rights and interests, Respondents.

The Court in their judgment of February 1926 (1) delivered by Anglin Chief Justice of Canada, Held that at Confederation legislation in Quebec was for purposes of educational matters, divided into two great religious denominations, Catholic and Protestant.

The questions submitted were answered to the effect that the Act of 1903 was only ultra vires if persons of a different religious faith had the right to attend at dissentient schools: "That under the Act of 1903 Jewish Commissioners could not be appointed, or the Board obliged to appoint Jewish teachers, and that the Province couldn't pass legislations to this effect". But they held that the Provincial legislature could pass legislation to establish separate schools for persons who are not Catholics or Protestants as such legislation wouldn't necessarily interfere prejudicially with rights and privileges enjoyed either by Roman Catholics or Protestants as a class at the Union.

They further held that in regard to Montreal, Jewish children had the right to attend and be received and given education, but not in rural municipalities which would be only as a matter of grace.

The matter was appealed to the highest tribunal

1. See, Canada Law Reports,1926. See, Crestohl for questions and answers.

in the Empire to the Privy Council. On obtaining special leave to appeal to His Majesty in Council, the Judgment of the Privy Council of February 2nd, 1928, before Viscount Cave, L.C., Viscount Haldane, Lord Buckmaster, Lord Darling, Lord Warrington of Clyfie, was given (1).

The Court approved of the judgment delivered by Anglin, C.J. in the Supreme Court of Ontario in regard to the Act of 1861, that "There were no dissentient schools either in Montreal or Quebec, although no doubt the schools in those cities were denominational schools", and against that "nobody doubted that the Roman Catholic and Protestant separate schools of Quebec and Montreal were denominational schools, or that the Protestants were a class of persons whose rights and interests were protected", and answered the question "Are the provisions of 93 of the British North America Act infringed by the 1903 Act? It is. First, were any of the schools referred to in the Act of 1903 denominational schools in which any class of persons had by law any right or privilege at the Union, and whether and to what extent the statute prejudicially affects any such right?"

The Court held that the Act of 1861 set up two different educational systems, one for Lower Canada outside the cities of Quebec and Montreal (rural area) and another system for the two cities --that is there were two clases of schools, namely,

(a) In each municipality, one or more common schools managed by School Commissioner , elected by all the landholders and householders of the Municipality other than the dissentient inhabitants.

1. Hirsch vs. Protestant School Commissioners,etal.,1928 Appeal Cases (Privy Council), p. 200.

(b) In any municipality where any number of inhabitants professed a religious faith different from the majority had signified such dissent, one or more schools managed by Trustees appointed by the dissentients.

These schools were maintained partly by monthly school fees, and partly by allowances out of the common school fund, and partly by a rate levied by the School Commissioners or Trustees as the case may be.

The teachers at each school were appointed by the commissioners or trustees, and examined by a Board of Examiners for the community which might if the governor in Council so ordained be organized into Roman Catholics and Protestants. The course of study was determined by Commissioners or Trustees, but books on religion and moral were to be selected by a cure of officiating minister for children of his own religious faith, children 5 to 16 residing in any school district were to have the right to attend the school thereof, upon payment of fees, but this doesn't appear to apply to dissentient schools which was reserved (except as a matter of favour) to their own children in the district and (if room) for children from other school districts of the same faith. This was not clear, but the British North America Act by paragraph 2 of Section 93 removed the doubt.

In regard to the rural districts, there was no question that the dissentient schools were denominational and formed a class of persons having rights and privileges with respect to the school, including the right to appoint managing Trustees who could select the teachers, control the course of study and exclude children of another faith.

But the common school in the rural area not being a separate or dissentient school, was under the control of Commissioners appointed by the whole body of landholders and householders in the district without regard to their religious faith, although in fact where the majority in the rural area are Catholics, they were ~~in fact~~ controlled by members of that religious community, but it was not a right or privilege to which any class of persons are by law entitled.

In regard to the Cities of Quebec and Montreal the system established by the British North America Act was similar to the rural areas in many respects, yet there were important differences.

Here there was already a mixture of religious beliefs in the population which was already dense, so two kinds of schools were at once set up by the Legislature.

The Statute of 1861 did not divide the two cities into majority and minority schools, but into Roman Catholic and Protestant. Each City was to be considered for the purposes of the Act as one municipality, and each school a school district. Schools in each city were to be managed by twelve commissioners -- 6 Catholics and 6 Protestants and each to form a separate body and payments were to be made by the City Treasurer to the respective Boards in proportion to the population and the religious persuasion represented by each (s 131). Each Board was to manage its own schools and appoint the teachers having been examined by a Board of Examiners, half Catholic and half Protestant, each half acting separately. Religious books to be chosen by Roman Catholics and Protestants respectively for their own schools. Any school managed by either Board

could be attended by any child in the city of the specified age. (ss 66, 128, 129).

The Court held therefore that these had the stamp of denominational schools and this couldn't be effaced by the attendance of a certain number of children of a divergent faith, and the Roman Catholics and Protestants were each within the clause "A class of persons which had by law a right and privilege at the union" and this agreed with the Supreme Court of Canada, Anglin, C.J.

It was held "that word Protestant in the statutes meant non-Catholic and didn't include Jews, and the whole Protestant Community though divided for some persons into denominations, was a class of persons under s. 93 of the British North America Act.

The Court further held that language of Act of 1903 was "very wide and comprehensive" and notwithstanding Anglin, C.J. to contrary, it would authorize the appointment of professing Jews to the Protestant Board of Commissioners and Examiners in Montreal and Quebec, and might even justify a claim on the part of Jewish inhabitants in the rural area to join with Protestants in forming a dissentient school and appointing its Trustees, and so infringe the rights and privileges of Protestants in the Protestant schools in the City areas and in dissentient schools elsewhere, and section 6 of the Act insofar as it purports to enable a professing Jew to send his children as of right to a Protestant dissentient school in the rural area, was an infringement on the rights belonging to Protestants at the Union and ultra vires.

Sections 2 to 5 of the Act were not in themselves void as infringing the Act of 1867. They therefore varied

answers to questions 1 & 2 (a) of the Supreme Court of Canada, as follows:

Question I: No, except so far as it would enable persons professing the Jewish religion to be appointed to the Protestant Board of Examiners, or to take part with Protestants in the establishment of a dissentient school outside those cities, and except so far as it would confer the right of attendance at dissentient schools outside the Cities of Quebec and Montreal upon persons of religious faith different from that of the dissentient minority.

Question 2 (a) Yes."

and affirm question 2 (b), 3, 4, 5, and 7.

In the course of their judgment they found that s. 93 of 1867 Act did not purport to stereotype the educational system of the Province as then existing, but it expressly authorized the Provincial Legislature to make laws in regard to education subject only to the provisions of the section, namely, protecting the right of Catholic and Protestant population as a class at the Union. This didnot mean that they both together form "a class of persons" with a right to object to the establishment of any school not under Christian control, but that it would be possible to frame legislation for the establishing of separate schools for non-Christians without infringing the rights of the two Christian communities, and that legislation so limited would be valid.

As a result of all this litigation and the final decision, Jews could have a separate school, but they could not be appointed on the Boards in the two

cities, nor in the dissentient schools of the rural districts, nor had they the right of attendance at dissentient schools outside the cities (except by grace). They did, however, have it in the common schools in the rural area, but these were usually those of the Catholic majority and Jews did not attend them. The Jews also had the above rights in Montreal. The Province could then force the Protestants to accept Jewish children in Montreal, but not in the rural districts.

As a result of this litigation, legislation was passed 20 George V (1930) Statutes of Quebec, Chapter 61, assented to on the 4th of April, 1930 "An Act respecting the education of Jewish children of the Jewish faith on the Island of Montreal."

By this Act a Jewish School commission of Montreal was formed, composed of seven members of the Jewish faith, appointed by Lieutenant-Governor in Council, one of whom shall be President for five years, subject to being replaced for cause. The Island of Montreal alone was affected by the Act.

The Commission was vested in respect of the education of persons of the Jewish faith, with all the powers vested in Montreal Catholic School Commission and Protestant Board of School in respect of education in their schools respectively and might act as advisors upon invitation to the Council of Education in regard to general problems.

The Commission might make regulations for the Government of its schools, if approved by the Lieutenant-Governor in Council, on recommendation of the Superintendent of Education as all school functions were to be solely under his jurisdiction as in the other schools. It provided for a Jewish central Board of Examiners; that a Jewish

school municipality might be formed within the territory of a Protestant school, municipality, or instead of forming a separate school they could arrange with other Boards of School Commissioners of the same locality for the education of such Jewish children in their respective schools.

Failing an agreement respecting the City of Montreal with the other Boards previous to April 1, 1931, the territory of the City of Montreal was to be erected into a Jewish school municipality under the Commission. Provision was made for taxes at the same rate as Protestants on properties of Jewish persons in a locality where a municipality was erected, with a share of the neutral Panel;- a provision was made for a separate panel for Jews wherever there were separate Panels, and other provisions for payment of costs if Jewish children went to Protestant schools.

By order-in-council #774 of the 24th of April, 1930, The Jewish Commission was appointed with the following members: (1)

Samuel W. Livingston,
Rev. Dr. Abramowitz,
Edgar M. Berliner
Abraham Z. Cohen
Michael Garber
Nathan Gordon
Dr. Max Wiseman.

By Chapter 63 - 21 George V Statutes of Quebec, the agreements in regard to Montreal and Outremont, a suburb of Montreal, which were entered into with the Protestant school boards were ratified and the Jewish commission was to have effect in Montreal and Outremont.

The agreement of December 3rd, 1930 concerning the City of Montreal provided that "The Jewish commission

1. See, Act 21,Geo.V,Quebec,Chap.63.

agrees that all Jewish children shall attend the schools of the Protestant Board and the Protestants agree to receive them."

2. "All Jewish children shall be subject in all respects to all the rules and regulations of the Protestant Board applying to Protestant children and shall receive the same treatment and be subject to the same obligations and enjoy the same advantages in all respects as Protestant children."

3. "Jewish children shall attend the school of the regular school district (as defined from time to time by the Protestant Board) within which they reside and within the schools so attended by them there shall be no division or separation of Jewish children from Protestant or other children."

4. "No Jewish pupil shall be compelled to read or study any religious or devotional book, or to take part in any religious or devotional exercise to which the father or, in his absence, the person, loco-parentis, shall object."

5. "Jewish children shall suffer no loss or reduction in marks because of absence from school on the following Jewish holidays: -

New Year	2 days
Day of Atonement	1 day
Tabernacles	4 days
Passover	4 days
Pentecost	2 days

6. "The Policy of the Protestant Board is to consider Jewish applicants eligible for appointment to the teaching staff and for promotion. This declaration of policy shall not be construed as in any way affecting the rights, powers, authority and duties of the Protestant Board."

The agreement was to be for fifteen years from July 1st, 1930, and unless terminated by notice to continue another fifteen years and was contingent on satisfactory legislation in regard to the cost of educating Jewish children. The same agreement was made with Outremont, subject to certain clauses that Jewish taxes be paid into the Protestant panel and the difference of the cost of educating Jewish children to be paid out of the neutral panel. (1)

In April or May, 1931, the Jewish Commission resigned after the above Act passed and the community is working under these agreements, though there is no commission.

In Westmount, the residential section of Montreal, of the wealthier Jews, and not part of the Island of Montreal, but incorporated separately, the Jews have been working under the Act of 1903 and still continue to do so. (2)

1. These agreements are contained in the Acts above referred to.
2. Interview with Nathan Gordon K.C., a member of the Jewish Commission, July, 1933.

This entire chapter is material for the needed work - Conclusions only should have been given. Description of Legislation could well have been omitted for purpose of the thesis

V.

ANTI-SEMITISM IN QUEBEC - Libel and Slander Cases.

It is a surprising phenomenon that a group of people, who have been so jealous of guarding their own minority rights within Canada when they become a majority within a certain Province or locality, forget their own struggles and allow prejudice and hate to dominate their attitude toward another minority group. Such has been the unfortunate history of the relation of the Catholics in Quebec to the Jews. It has been a source of some satisfaction to know that often the best of element of French Canada have in no uncertain terms condemned this racial animosity.

Probably the first case of criminal libel, some time previous to 1911, was King vs. Gaspan Robillard, editor of the Pioneer at Montreal who made an attack on the Jewish people of Montreal. [illegible].

He was committed for trial by Judge Chaquet. Before the date set for hearing the accused thought it more advisable to quit the country then to stand his trial. A bench warrant was issued and as far as I know, is still in the hand of the High Constable (1).

The next case is a famous one in the history of Canadian Jewry, taking place in the City of Quebec, and wherein the leading lawyers Jewish and non-Jewish took part.

The action started in 1910. Judgment was delivered on October 22, 1913, and it went to appeal on November 17, 1913. (2)

This was a civil action for damages for loss of business by two Jewish merchants in the City of Quebec, Benjamin Ortenberg and Louis Lazarovitch against J. De Plamondon, a journalist and notary of notoriety, as a

1.Fitch's argument for plaintiffs in Ortenberg case,ante-- from original papers in Quebec,City Court Archives.
2.Ortenberg vs. Plamondon,24 K.B. (Quebec) pp. 69 & 385, reversing 14 D.L.R.,549.

result of defamation against the Jewish people. They claimed $500. The pleadings of the plaintiff in the case show that on March 30th, 1910, before a great number of persons, and under the auspices of the Circle charest de l'association Catholique de la Juenesse Canadienne, the defendant gave a lecture entitled Le Juif" - The Jew.

In this lecture which was also published in the form of a booklet, the defendant accused the plaintiff and his co-religionists of being corruptors of women, assassians of children, makers of revolutions, etc. The Jews were also charged that without exception they were enemies of the Catholic faith and that they preferred the Talmud to the Bible and believed and practiced that :

(a) Jesus Christ is an idol conceived in vice and in adultery;

(b) Those who follow Jesus are idolaters;

(c) Christian is an animal. Those who return to a non-Jew a lost thing commit a sin because it fortifies the power of the impious.

(d) Jew can practice usury in regard to Christian - adding interest so high that debtor cannot pay without selling his goods until a Jew obtains possession of them.

(e) It is permitted to abuse a non-Jewish woman;

(f) Those who shed the blood of impious non-Jew, offer a sacrifice to God.

(g) One should strangle and slaughter the best of the Christians;

(h) The Jew if he has the power under any pretext whatever should publicly put heretics to death.

(I) A Jew accused of having killed a Christian may swear that he has not killed a man believing to himself and saying to himself that it

is not a man but an animal he has killed.

The defendant pleaded that he didnot refer to individuals and that Jews in Christian countries had raised the gravest political, religious and social problems, etc., wherever they established themselves. They remained isolated, whorshipped the golden calf and had no other ambitions or occupations than those of drawing money from Christians and of seizing their capital by usury and exploitation, etc. They mentioned that Insurance companies in Quebec had refused to insure Jews (this was denied later by Montefiore Joseph). (1)

For some years they charged the Jews were chased out of Europe by the Governments of the Christian Nations; they arrived in great numbers in Canada and especially in the Province of Quebec, where they infested the cities and countrysides where they have become a social plague, making great competition for the regular business of Christians, etc., all to immediate damage of the Christians and of the Christian Institutions of this Province. They claimed that they were reciting public facts published in innumerable works on the peril of the Jews and that they were true. This pleading of the defendant was dated June 6, 1910. The case was tried in the Lower Court in May, 1913. It lasted a few weeks.

Dr. Abramowitz, Rabbi of Shar Ha Shamoim, the leading orthodox synagogue in Montreal, gave evidence denying all the statements in regard to the supposed teachings of the Talmud and showed how similar charges had caused disaster to the Jews in the past, and how they had been denied by the Popes in the past; that Jews have taken a leading part in Christian nations and mentioned

1. See his evidence in original papers in Court Archives on which the account of the case is based together with the judgment therein. Mr. Abraham Rhinewine in "Der Yid in Canada", vol. II gives an account as well.

that Baron Rothschild, Nathan Strauss, Jacob Schiff, Oscar Strauss, Lord Reading, Lord Mayors of London and the Mayor of Rome were all Jews.

Among others, Frederick George Scott, Rector of St. Mathews Church of Quebec and Thomas Anslie Young, schoolmaster and principal of Quebec Boys High School gave evidence and spoke for high character and ability of Jewish children.

Mr. Montefine Joseph, one of the oldest Jewish residents, also testified and denied his inability to obtain insurance in Quebec. Evidence was given for the defence along the lines of the pleading.

It is interesting to refer to the argument of Counsel for the Plaintiff, Mr. S. W. Jacobs, K.C., prominent Jewish lawyer of Montreal, who argued the case together with Mr. Fitch, K.C. of Montreal & before Hon. Mr. Justice Malonin.

The action was taken under Article 1053 of the Code: "Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another by positive act, imprudence, neglect or want of skill." This is the article under which civil slander must be tried. (1)

Mr. Jacobs recited the history of progroms against the Jews and referred especially to the Beilis affair in Kiev which was then in progress. At one time in his argument he referred to the L'Etudiant, the official organ published by the students of Laval University in Montreal, in its issue of November 8th referring to the influx of Jews into this country. The statement was made that: " At the end of fifty years as Drumont said, there would be no longer any Canada, society or family. There would only be prostitutes, pornographs, politicians, grafters, master cheaters, etc. " Mr. Jacobs revealed to

1. Under Sec. 317 of the Criminal Code of Canada it is defamatory libel to publish without legal excuse matter likely to injure the reputation of any person by exposing him to hatred, contempt and ridicule, etc. It has been held in England under this section that only when general reflections on a body or class tend to cause outrage or lead to violence will an information be granted. (see, Crankshaw, 1924, Can. Crim. Code, p.416.

the Court that he had written to the head of the college Mr. Justice Mathieu retired Supreme Court Judge and Dean of the Law Faculty complaining of the article, Mr. Justice Mathieu replied:-

" Montreal, 4 December, 1912.

My dear Sir:

I have delayed answering your letter of the 16th of November last, drawing my attention to certain attacks against the Jews published in the Journal L'Etudiant. I, at that time, as severely as I have been able to, blamed the writer in the presence of all our students legal and notarial, and I have reason to believe that these unjustifiable attacks will not be renewed. We have already had several Hebrews among our students, and you have been one of this number, and your conduct and your success flatters us very much.

We keep an excellent remembrance of all those of your race who have studied with us, and it is with very much regret that I have learned of this unjustifiable publication." (1).

Mr. Jacobs, after reading this letter said "That is the opinion of the head of the University of Laval of Montreal- Of a man of the world, that is the opinion of a Judge of the Superior Court who has sat for twenty-five years on the Bench and who has now retired with honor".

Mr. Jacobs argued that the Act of 1832 "is our Magna Charta. That is the great charter of our rights in this country and under that act we demand before the Courts of this Province the very same rights as other people have".

1. Argument of Jacobs for the plaintiffs--original file.

He then referred to many anomalies of the law which were due to the fact that when they were promulgated they merely referred to Protestants and Roman Catholics as appears from their preambles. These were remedied by the Provincial Legislature. There has not been a single act referring to the Jews, or giving them from time to time further measures of liberty which was not passed unanimously by the Legislature of Quebec. That the Legislature has recognized the Jewish community of Quebec by giving them incorporation for their Synagogue and power to keep registers of civil status and thus recognized their equal rights with others.

He argued that if Jews had committed all the crimes that they were alled to have done, it was strange Parliament had treated them so favorably. He mentioned the view of clergymen who gave testimony for the defence that there could be no assimilation unless there was baptism.

Mr. Fitch argued that the books quoted by the defendants were written in France during an anti-semitic agitation. He showed the Talmud to the 'expert witnesses' and they could not point to the passages in question. The judgment (1) held that a civil action for damages did not lie for loss of business alleged to have resulted to the plaintiff from an alleged defamatory attack on the sect or class to which he belonged, contained in a public address which had been printed and issued in pamphlet form, where the attack was not beyond the bounds of free discussion of philosophy, social or religious doctrines or opinions and did not name or indicate the plaintiff especially in any defamatory sense.

1. 14 Dominion Law Reports, 1913, p.549.

On appeal this judgment was reversed and the head note which is a fair summary of the judgment read:

"A treatise attacking a Jewish population composed of 75 families in a population of 80,000 persons, in terms which would be libelous if it had been addressed to an individual, is not addressed to a group numerous enough to be lost in the number and must be considered as defamatory. In this case one of the members of this Jewish population can enter an action in damages against the author of this libel. (1)

This case therefore did not meet the general case of libel against creed or sect, but only in the case where the Jewish group was so small, that libel against the race amounted to pointing out the individual themselves -- did an action lie.

Anti-Semitic writings and agitation in Montreal particularly by certain French Canada papers increased especially during the last few years. Much of this anti-semitism arose as political capital used by the French Canadians, as a result of the School Bills. (2). The Conservative party led by Houde was against the bill of creating the Jewish School Commission. Many Anti-Semitic speaches were made by Houde. The Bill was passed and Houde attacked the Government. Then the Government brought in a second bill which proposed to "kill" the Commission, the government claiming an agreement was made and the School Commission was not necessary. It has been said that this is one of the real causes of Anti-semitism in the Province -- an attack against the Government subsidized by Houde and the Conservative party, as a method of onslaught against the Government.

1. 24 King's Bench, Quebec, pp. 69 & 385.
2. Interview with Joseph Cohen K.C., member of Legislative Assembly.

As a result of Anti-Semitism then, Mr. Bercovitch, a member of the Legislative Assembly of Quebec and a leading lawyer, brought in his Defamation Bill #167. The first reading was on the 29th of January, 1932, and the second reading was on the 16th of February, 1932. Discussion then started and was "killed" the bill being "left before the committee" in a meeting of the 19th of February which is equivalent in Parliamentary language to be withdrawn.

The pressure brought to bear by the higher clergy it has been said on good authority was greatly responsible for its "withdrawal"; "the press must not be muzzled" was the slogan behind which they worked.

This bill desired to make it possible to obtain an injunction against the continued publication of a defamatory libel without legal justification or excuse against any nationality, race or creed, likely to expose such nationality, race or creed to hatred, contempt or ridicule. Any member of such creed, etc., might apply to a Judge of the Superior Court where a libel is published for a Writ of injunction against such libel. (1).

The next important incident arose as a result of a virulent anti-Semitic campaign by three French Canadian Journals -- Le Goglu and Le Miroir/Le Chameau.

Mr. E. Abugov a Merchant of Lachine presented a petition requesting the Court to enjoin the said journals from slandering the Jewish race and himself claiming $500. damages.

In a historic document of great significance and interest, as it is written by a French Canadian himself (2), the learned Judge found with regret that he was unable to permit an injunction under article 957 of the Code of Procedure. Had the Bill above mentioned been passed he could have done so. The Judge considered

1. See original bill, Appendix, p.315, cited as Publication of Defamatory Libel Act and endorsements thereon.
2. See, Appendix, p.317, for full text of judgment translated in Canadian Jewish Chronicle, Montreal, Sept. 16, 1932.

that it was up to the Legislature to remedy matters of this nature and severely condemned the papers.

. At the next session of the Legislature, Mr. Taschereau, Premier of Quebec, introduced such a bill, a copy of which is shown in the appendix. (1)

It was Bill #167. The first reading was on the 21st of February, 1933, the second reading was scheduled for February 1933 but it was withdrawn on the 12th of April, 1933, before the second reading, due to political pressure again.

At the present time Anti-Semitism continues, but no legal remedy has been found, although representative citizens were able to induce the Prime Minister of Canada to forbid the use of mail for anti-semitic purposes. Stickers were put on of an anti-semitic nature, but these, according to the regulations now go to the Dead Letter Office.

1. See, page 316 and endorsements thereon for original bill proposed.

VI.

SUNDAY OBSERVANCE

Sunday observance laws are in the nature of criminal law and as such according to our Constitutional system, would come into force with the introduction of the Criminal Law, at least as far as adapted to the circumstances of the Province, of England into Canada in 1775, (1). The Criminal Law includes, not only the Common Law, but Statutory law as well (2). It was held that Sunday Observance Law was already the subject of Criminal legislation, as appears by reference to the Statute 29, Carl II, Chapter 27, part of the criminal law of England declared to be in force by the Quebec Act. (3)

It follows, therefore, that English law in regard to Sunday Observance (this meant the unrepealed Statute 29 Carl II, Chapter 7) was the only law that could be applied, and was in force here and remained so unless it could be established that its terms were abrogated by any Pre-Confederation Act in any Province, or by the terms of the Lord's Day Act after Confederation; because after Confederation, the Dominion Government, had sovereign power to legislate on criminal matters under Section 91 of B.N.A. Act, though we shall see that such power might be and was delegated to the Provinces. (4).

The Statute of 29 Carl II, Chapter & 7 (1676) provided in section 6:

"That no person or persons whatsoever shall publicly cry, show forth, or expose for sale, any wares, merchandise, fruits, herbs, goods or chattels whatsoever, upon the Lord's Day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth, or exposed for sale."

1. Quebec Act 14, George III C.83, Sec.11; see, Attorney General of Ontario vs. Hamilton Street Railway 27 C.C.C., p.326, 1903, Appeal Cases 524; also Ouimet vs. Bazin 46 S.C.R., 502.
2. Tremear's Crim.Code, 4th ed., p.28.
3. Ouimet case supra, p.505. 4. See, sec.2, Lord's Day Act, ante extended to charter of a municipality.

This was the law of Quebec until 1805 when a Sunday Observance Law was passed, 45 George III, Chapter 10, which in part abrogated the English law. It provided "no shopkeeper, pedlar, or hawker, shall sell or retail any goods, wares or merchandise during the Sunday." (1)

The Charter of the City of Montreal, 1865 - 23 Victoria, Chapter 72, Section 12, authorized the Council to prohibit the selling of goods, wares and merchandise, wines and spirits.

In its Charter of 62 Victoria, Chapter 58, 1899, Section 300, subsection 76, the Council is authorized to prohibit the selling on Sunday by shopkeepers, hotel keepers, tavern keepers, or other persons of goods, wares, or merchandise or intoxicating liquors,,etc. and to regulate the sale of fruits, cigars, confectionery and temperance drinks on Sunday, in the City and on St. Helen's Island Park.

The Charter as amended in 1924 in the same subsection provided for the prohibition of selling on Sundays as above and to permit or regulate on Sunday the sale of fruit, confectionery, temperance drinks, and other dainties, as well as the sale of flowers, cigars, etc.

In the meantime, in pursuance of its rights, the Dominion Government had legislated on Sunday Observance in 1906 by the Act of 6 Edward VII, Chapter 27, in force February 1st, 1906. This Act gave authority to the Province to legislate out of its provisions and recognition was also given for permissive acts already passed by provincial legislatures. These were embodied again in 1927, Revised Statutes of Canada, Chapter 123 - Lord's Day Act.

1. We received much assistance from the original files and factums in the offices of the solicitors involved in the cases cited in the following pages,--where the law is fully considered. These files and conversations with the solicitors form the basis of this account in view of the fact that most of the cases are unreported.

The pertinent clauses are --

Section 2 a In this Act, unless the context otherwise requires "Lord's Day" means the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon.

Section 4.

It shall not be lawful for any person on the Lord's day except as provided herein, or in any provincial Act, or law, now or hereafter in force, to sell or to offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling or for gain to do, or employ another person to do, on that day, any work, business or labour.

Section 11r.

Notwithstanding anything herein contained, any person may on the Lord's Day do any work of necessity or mercy, and for greater certainty, but not so as to restrict the ordinary meaning of the expression "work of necessity or mercy", it is hereby declared that it shall be deemed to include the following classes of work:-

(r) The delivery of milk for domestic use, and the work of domestic servants and watchmen.

The Quebec Legislative on 28th of February, 1907 by 7 Edward VII, Chapter 42, passed the Sunday Observance Act now, R.S.Q., Chapter 199, taking advantage in Section 2 of Section 4 of the Lord's Day Act.

The following clauses of the Quebec Act are of interest:-

According to the provisions of Section 4, above quoted, reference should be had to "any provincial act or law now or hereafter in force", and we therefore

refer to 1925 R.S.Q. Chapter 199, which is the Sunday Observance Act of the Province of Quebec. The relevant parts of this Act, which apply, are:-

Section 2:

The Laws of this Legislature, whether general or special respecting the observance of Sunday, and in force on the 28th of February, 1907 (the date of the coming into force of the Act 7 Edward VII, Chapter 42) shall continue in force until amended, replaced or repealed; and every person shall be and remain entitled to do on Sunday any act not forbidden by the acts of this Legislature, in force on the said date, and, subject to the restrictions contained in this division, to enjoy on Sunday all such liberties as are recognized by the customs of this Province.

Section 3:

No person shall, on Sunday, for gain, except in cases of necessity or urgency, do or cause to be done any industrial work, or pursue any business or calling, or give, or organize theatrical performances, or excursions where alcoholic liquors are sold, or take part in or be present at such theatrical performances, or excursions.

Section 7:

Notwithstanding anything contained in this division, whosoever conscientiously and habitually observes the seventh day of the week as the Sabbath day, and actually abstains from work on that day, shall not be punished for having worked on the first day of the week, if such work does not disturb other persons in the observance of the first day of the week as a holy day, and if the place where such work is done is not open for trade on that day.

Section 8:

Nothing contained in this division shall restrict the privileges granted or recognized by chapter 153 of the Revised Statutes of Canada, 1906.

By Section 8, it is evident that in any prosecution under the Provincial Act, reference must also be had to the Federal Statute, and therefore in any prosecution the two Statutes must be read together and the examples under any Statute would avail in favour of an accused.

It is interesting to note section 7, which it would seem provided specifically for Jews who observe the Sabbath, but which has been interpreted, as we shall see, somewhat unfavorably to the Jews.

Let us now deal with the cases reported and unreported affecting Jews.

In the case of the King against M. Abugov it was established that Abugov, on Sunday, the 17th of May, 1931, sold certain fruit, also some cake, cigarettes, cigars and soft drinks (Coca Cola).

The defense proved, (and it was not contradicted) through many witnesses, that throughout the country sections, as well as in Montreal, the sale of fruit for consumption, and to be taken away had been tolerated and that in Country sections merchants who sold fruits, though not exclusively, were known as keeping a restaurant; that stores known as restaurants were kept open on Sunday as far back as people can recall, also that butchers besides selling meat also sold fruit and vegetables. They would keep open their stores immediately after mass for the convenience particularly of farmers.

The Defense argued custom under the Quebec Statute and the municipal charters of Montreal under which by-laws were passed which recognized the right of the sale of fruit and that the bylaws were declaratory of the custom. Custom is more or less local to a City or a Province, but not a whole nation (Page 1 Words and phrases Judicially defined Volume 2) and is a reasonable and universal rule of action in a locality within memory of a living resident). (1).

The Lower Canada Statute passed in 1805 did not forbid the sale of fruit, as did the English Statute of Charles II, which made a distinction between fruit and wares and merchandise. This distinction is kept in the Municipal Charters where there is a prohibition to sell goods and the right recognized to permit and regulate only fruit. (2).

Necessity was also argued. The Judge held in favour of the accused.

The next case is that of The King vs. Harry Rogatko in 1931. This was a case of selling meat (delicatessen) on Sunday, in violation of the Lords Day Act. There was a restaurant attached to the store as is usual in Delicatessen stores, and the accused was a licensed restaurateur. A part of the business was selling meat sliced or in sandwiches to take away. The defence was based on custom, necessity and on Statute Charles II. The only argument maintained was custom, the other two being unnecessary to consider. The accused pleaded Custom due to the fact that he had a restaurant license similar to Childs, Northeastern Lunch and Zerhula & Odian, well known Gentile restauranteurs

1. See factum on office of Bernstein & Rohrlick, solicitors for the accused for details of argument.
2. Dupuis vs. Blouin, 24 Canadian Criminal cases 441 and others were cited.

by Provincial and Municipal authority, and therefore custom was proven by showing Childs have kept open from time immemorial. This was maintained by the Court and the appeal was dismissed by Judge Wilson. (1). The Defence argued if it was permissible to sell articles of food for consumption on the spot, consumption at home was also permitted - - and that sliced meat wouldn't hold over for more than that day. (2). Testimony was given that delicatessen stores existed in Montreal for about twenty-five years, and /the custom of restauranteurs generally had been to sell food for outside consumption, and only recently had there been any prosecutions of delicatessen stores. Another defence was that Section 15 of the Lord's Day Act didn't repeal the English Act which was in force in Quebec, but states "Nothing herein shall be construed to repeal, or, in any way, effect any provisions of any Act or Law relating in any way to the observance of the Lord's Day in force, or any Province of Canada when this Act comes into force." Section 3 of the English Statute reads:

"That nothing in this Act contained shall extend to the prohibiting of dressing of meat in families, dressing or selling of meat in inns, cook's shops, or victualling houses for such as otherwise cannot be provided".

As no Quebec Statute or law forbade the sale of cooked meat for immediate consumption, the provisions of the English Act would apply under Section 2 of the Quebec Act: "That every person should be and remain entitled to do on Sunday any Act not forbidden by the Acts of Quebec Legislature then in force.

1. Files of Bernstein & Rohrlick & factum, solicitor for accused, 1933.
2. Cited Rex & Sabine, 8C.C.C.70; Green vs. Alberti 3 C.C.C., p. 336 & Toronto Case.

In the case of Rex against Benjamin Diamond, (1931) which was appealed by Diamond to the Appeal Court, / the Appeal Court held that the particular business carried on by Diamond did not entitle him to exemption under the Lord's Day Act. This was a case where the facts disclosed that employees of the accused were preparing dough on Saturday night and on Sunday at noon bread was delivered by an employee of the Appellant. The accused also sold bread in the store on Sunday. The accused an, Orthodox Jew, had carried on business this way for the past twenty years without disturbance. Evidence was submitted that the Jewish Sabbath for Orthodox Jews commenced Friday at sunset and continued until Saturday sunset.

The defence was under Section 7 of the Quebec Statute because as he kept his store closed on Saturday, he claimed he was entitled to keep his store open to deliver bread. The other defences were custom and necessity.

The argument in the appeal refers to the Judgment of Recorder Semple in the Court below, who held that Section 7 referred to Jews who keep their establishment closed from 12 o'clock Friday afternoon (midnight) (24 hours previous to Sunday) to 12 o'clock Saturday. As the accused had kept open Saturday evening, he did not come within the provision. This interpretation meant a Jew would have to be more religious than required by his religion; in interpreting the Statute it is necessary to realize that it was enacted as a religious Statute to respect the liberty of conscience of a certain group of the community; being legislation on a religious topic one must necessarily interpret the Statute in the light of religious observances. There is no doubt

that the intention of the legislatures was to the effect that a Jew, who keeps his store closed on the Jewish Sabbath, need not, with certain restrictions, keep his place closed on the Lord's Day, and it is for the Tribunals to so interpret the Statutes in a way, which would fulfill the purpose and intention of the legislature.

Citations were adduced from Exodus, Chapter 20, 5, 8, 9, 10 and Genesis Chapter 1, verse 5, to show that Sabbath day was from sunset to sunset and recognized by all and this was the interpretation given by the Chief Rabbi of the City of Montreal.

Under Custom, it was shown by the defence that the evidence of the Appellant and the Chief Rabbi (uncontradicted) was to the effect that this manner of conducting business was practiced for the last forty years without disturbance, and no prosecution was ever taken. Under the heading Necessity, they argued that if closed on Sunday, no bread could be made, and on Monday Jews would have to eat stale bread. (1)

The Judgment is now on appeal. There were several other cases under Section 7 of the Sunday Observance Act of Quebec, the first of which was the Crown vs. Vineberg. In this case, it was held that the seventh day meant a day beginning Saturday at 1:00 A.M. to midnight of the next day, and if anyone kept open Saturday evening, they violated the law. However, in the cases of the Crown vs. S. Wiener, and Levinson, large clothing factories in Montreal, who were charged with working on Sunday, it was held that being closed on Saturday they did not transgress the law. (2).

1. Files of Crestohl & Crestohl.
2. Information from Cohen & Semaroff, solicitors for the defendants herein.

The case of Rex vs. Freedman, which went to appeal, was also under Section 7 above and dealt with the bakers doing their ordinary business by delivering bread to customers. The accused was convicted on the ground that the seventh day was from midnight to midnight. Since this case, Jewish bakers have not been able to deliver on Sunday. (1)

More recently, there were two important cases in regard to bakers working on Sunday. The first case was Rex vs. Guarantee Bread Company. This was a charge against a Jewish baker for baking on Sunday. Necessity was pleaded before Recorder Leblan. The accused proved that it was not baking, but making a mixture or fermentation which must of necessity be prepared four to eight hours before the dough is made. The Judge held orally (2) that it was doing the same thing on Sunday as every other day and held the Company liable.on the ground that it was not a work of necessity. This case has gone to appeal.

The next case is that of Rex vs. Richstone. This case came before Recorder Semple who held the reverse of the last mentioned case and maintained that baking on Sunday was a work of urgency, as well as customary. This case has also gone to appeal. The Richstone case was a test one on which hinged the fate of some nine other firms charged with unlawfully employing for gain men to do work on Sunday. The Company in this case hired six men to work on Sunday. The principal thing manufactured was rye bread which requires longer to ferment than in the case where yeast is used. Evidence was introduced by the defense that many gentile firms in existence from fourteen to forty years commenced the manufacturing between ten and

1. From files of Crestohl & Crestohl, solicitors for defendent.
2. Interview with Mr. Godinsky of Greenblatt and Godinsky, solicitors for the accused, July,1933.

twelve in the forenoon on Sunday of the bread required for delivery on Monday. Christian bakers using yeast to ferment their bread had been unmolested since the judgment in April 1930 in King vs. Lafranc, declaring legal the manufacturing of bread on Sunday, while the accused, requiring a longer time for fermentation was singled out. In the words of the learned Recorder,

"Having regard to the evidence of record, while it might not support a plea of necessity - bread may be the staff of life, but other foods are available - on the other hand, it quite sufficiently established that the manufacture of bread on Sunday is a case of urgency. Going even further and met with the plea of 'custom' under section 2of the Quebec Statute, the prosecution had failed to substantiate its charge, the testimony of witnesses determining that bakers in Montreal have for upwards of forty years done that very thing which is the basis of these proceedings. (1).

The Judge remarked "It is a strange thing that Christian bakers in preparation for the manufacturing of bread do the same as Jewish bakers are accused of and there were no prosecutions against them".

In view of the above state of law, it would be well to wait till the cases at present on appeal are decided before venturing an opinion as to law in these Sunday cases.

1. From report of case in the Montreal Gazette, June 23, 1933, the date of the judgment and from interview with Joseph Budyk K.C., solicitor for accused. There was a written judgment.

PART II

O N T A R I O

(UPPER CANADA)

VII.

POLITICAL and CIVIL STATUS OF JEWS.

What has been said in regard to the political rights of the Jews in Lower Canada applies to a great extent in Upper Canada, which by the Constitutional Act of 1791 became a separate province. This was necessitated by the influx especially in certain sections of what became Upper Canada, of United Empire Loyalists who had come from the American colonies after the Revolution accustomed to British laws and institutions, and who resented strongly the French Civil Law, which at any rate by the Quebec Act of 1774 was the law governing property and civil rights in Canada with some exceptions (1). This law remained in force in Supper Canada (2) until the first Parliament in Upper Canada meeting at Newark (Niagara-on-the-Lawk) first enacted by 32 George III, 1792, assented to October 15th, 1792, that from and after the passing of this Act, the clause in the Quebec Act, 'in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada' was repealed and it was provided that in such matters, resort should be made to the Laws of England, as the rule of decision of the same, 'so in regard to evidence, legal profession, and investigations of matter of fact, etc. The ordinances made by the Governor in Council previous to 1792 were therefore to remain in force, except as repealed by the above provisions, etc.

From the 15th of October, 1792, the English laws as they existed on that day in regard to the above matters were in force in Upper Canada, except as above, and another exception, not expressly mentioned by the Legislature, all such English laws as were not applicable

1. Quebec Act, supra, p.II.
2. See, Constitutional Act, sec.33; 32 George III, 1792, chap. 1.

to the state or condition of the Province, such as it supposed the Legislature intended to introduce under the general words used by them. Generally speaking, English Statutes form part of the Common Law in force prior to 1792, subject to the rules laid down in a previous Chapter (1).

The Act of 32 George III, Chapter I is not such as expressly introduced the whole civil law of England, but limited to giving the principles of English law, as a rule of decision. (2).

This latter principle was discussed in Leith's Blackstone, Page 34, which quotes the judgment of Sir J. B. Robinson, C.J. in Doe dem vs. Todd (3) which holds the above principle. In this case the Statutes of Mortmain were considered not applicable here under 32 George III, and only held in force here because they had been assumed to be so by various enactments of the Provincial Legislation.

Because however some provisions of an Imperial Act are to be rejected as inapplicable, it does not follow that other provisions of the same act are to be rejected. (4).

In regard to Criminal Law, it was introduced by Royal Proclamation of 1763, into the Province of Quebec, which territory as defined in the Proclamation did not include what is now Ontario. By the Quebec Act, the limits were extended to the whole territory (including Upper Canada) and the Criminal Law of England was the law in regard to criminal matters. This law was continued in force here (see Constitutional Act Section), being expressly recognized in Upper Canada by 40 George III, Chapter 4, which enacted that 'The Criminal Law of England,

1. Page 3 following supra.
2. Leith's Blackstone cited on p. 3 supra.
3. Doe dem vs. Todd, 2 Upper Canada Reports, p.82.
4. Regina vs. Roblin, 21 U.C.R., 354.

in the main as of 17th September, 1792 shall be the criminal law of England in Upper Canada."

In our discussion of the principles of law applicable in Lower Canada, we showed that the Naturalization Act of 1740 was by law and in fact part of the law of Quebec and (Lower Canada). The same arguments adduced there, apply with just as much force, if not more, in Upper Canada, after 1791; all the privileges of sitting and voting in Parliament, of holding land, of holding offices, etc. as a natural born British subject would be the right of a Jew naturalized under the Act. This by virtue of general law, of the Quebec Act (1) and of the Constitutional Act suppored by the additional laws and documentary evidence, I am about to deal with.

We mentioned the Imperial Statute 6 George IV (2) Chapter 114, section 49, (1825) which made a Provincial Act repugnant to an Act of British Parliament which related to or mentioned the British possessions, void.

The last Act would remove any doubt, if there was one, that the Act of 1740 was in force here.

In the case of Gardner against Gardner,(2 U. C. J. Jurist,) (3), in respect to the Statute (1846-1848) 5 George II , Chapter 7, or part of it, enacted before Canada became British, there is a reference in the Judgment of Robinson, C.J. to a case of Gray against Willcocks which was appealed to the Privy Council (4) and the judgment says, that in the latter case, doubt was raised whether 5 George II was in force in this province

1. Last section of Act; see supra, pp. 7 & 8.
2. Page 8 (note).
3. See, p. 8 supra.
4. We have been unable to find this case in the reports.

being a Colony acquired by conquest, since the passing of that Statute, and the English law having been introduced as the rule of decision by the Colonial Statute of 1792; it was decided that the Statute was in force "if not otherwise, yet certainly under the 18th section of 14 George III, Chapter 83 "a decision by which we are bound so that the fundamental question no longer remains to be discussed."

In Gordon against Fuller (1), Robinson, C.J., after quoting the Act of 5 George II, Chapter 7 (act re debts)/Quebec Act, Constitutional Act, Sec. 31, and 33, and 32 George III, Chapter I, introducing Civil law here;also Imperial Act, 6 George IV, Chapter 114, section 49 (2) held, "That the British Parliament did not mean to give the Colonial Legislature authority to repeal Acts of Parliament prior to the 31 George III (3) expressly binding in the Colony,(and especially such as did not concern the colony merely) is evidenced in the strongest manner by George IV, Chapter 114, Section 49",,and in Lower Canada the Statute in question has uniformly been held in force".

In Gabriel against Derbyshire, 1852, also a case under 5 George II, Chapter 7, (4), the judgment referred to Gordon against Fuller as establishing that the Statute 5 George II, Chapter 7 was in force here.

The Naturalization Act of 1740 was in force in Upper Canada then - seems beyond any doubt, especially when we examine the further documentary evidence especially referring to Upper Canada.

1. 5. Old Series (Upper Canada), p. 174.
2. See p. 156 supra.
3. Constitutional Act.
4. 1 Common Pleas Upper Canada,p. 422.

Many foreigners had come into Upper Canada from the earliest times as pioneers, and had received grants of land from the Crown and devised real property (1).

This was especially so after the war of 1812-14 and a certain group in the Legislature fought against the autocratic Council to give these foreigners the right to sit in the Assembly and to hold lands which under the law of England (which was in force) was not permitted. (2). Resolutions were passed in the House to the effect that the Statute of 1740 and that of 30 George III, 1783, which ~~xxx~~ invited Americans to settle here without the necessary residence of 7 years, but merely by taking the oath of Allegiance were in force here.

It was the policy of the British Government in regard to the right of American Citizens to hold land, that the provisions of the Naturalization Act of 13, George II, and the Act of 30 George III should be enforced. In a despatch from Bathurst to Mr. President Smith (3) Lord Bathurst stated:-

"But on the other hand the assembly are in error in supposing that the taking of such oaths can of itself qualify an American citizen to hold lands in the province. The Act of 13 George II, Chapter 7 is <u>still in force</u> and under its provisions, a previous continued residence --------".

The following letter is to the point, Opinion of Law Officers of the Crown:

Sergeants Inn, Nov. 1817

My Lord:-

1. Mackenzie, Wm. Lyon, Makers in Canada, p. 140.
2. Gourlay--Statistical Account of Upper Canada, vol. II, p. 287, foll. ff; see Journals of House of Assembly for 1817, Ontario Archive Reports.
3. Can. Archives, Series "Q" 344, I, p. 86.

"We have had the honour to receive your letter of 13 November, 1817, stating doubts have arisen as to the rights of citizens of the United States to hold lands in the Province of Upper Canada under Statute 13 George II, Chapter 7 and 30, George III, Chapter 27"----------
"Asked opinion whether the Acts of 30 George III Chapter 27 vests Governor, Lieutenant-Governor or Magistrate with any discretion as to refusing to administer the oaths of allegiance to American Citizens arriving in the Province or whether American Citizens are entitled to hold lands in the British Provinces immediately after having taken the oath of Allegiance, without previous residence, notwithstanding the provisions of 13 George II, which requires a continued residence for 7 years as the necessary qualification for possession of landed property,
opinion -------subjects of United States coming to reside in Upper Canada are entitled to have oaths of Allegiance and Oath of intention to reside ----------administered, and the Governor has no discretion.

With respect to the question, we are of the opinion that an American Citizen will not by reason merely of having taken the above oaths be entitled to hold lands there, but he must by the 13 George II, Chapter 7 (which is still in force) reside within the Colony 7 years before he can be entitled to hold lands as a natural born subject."
(1)

In a letter from the Attorney-General to Mr.

1. Illustrative Documents by Cruickshank, Ontario Historical Society Proceedings, vol. 23.

Smith, York, April 1818, in regard to a Proclamation prepared at the request of Lord Bathurst, he stated he appeared before the Council to explain it. The Proclamation declares no foreigner will be permitted to hold lands in this province until he has in all things complied with 13 Goerge II, Chapter 7, and the stated measures will be taken to dispossess those who had not so qualified and held land. "The Act of 13 George II Chapter 7 refers to foreigners as those born out of the legience of His Majesty. No middle state between those of natural born subjects, who, of course, stand in no need of the beneficial provisions of the Act."

The question was again referred to by the Select Committee of/Legislative Council in regard to civil rights, which reported that "These two laws (12 George II, Chapter 7, 30 George III, Chapter 27) contain all the provisions for the naturalization of emigrants into this colony," (1) and said aliens had to be so naturalized to hold land.

In a letter of Bathurst to Maitland, August 31st, 1826, the view was expressed that the Government wouldnot admit aliens in Upper Canada to all the privileges of natural born subjects, unless the Statute of 13 George II was complied with.

"The Statute of 13 George II, Chapter 7, has already regulated the manner in which such persons may acquire the privileges of English birth and if those provisions require revisions it will be the office of Parliament to review and alter them". Otherwise, the Government would only assent to retrospective provisions to relieve actual not future inhabitants at the time of

1. Can. Archives, series "Q" 343,II, p. 406; see, also p.467, pt. III.

passing the Act of Parliament. (1). Only those who couldn't qualify under 13 George II needed an Act of Naturalization. (2).

In an analysis by the committee of the naturalization Acts in force, we read "That if not a Quaker or a Jew they shall receive the Sacrament at some Protestant or reformed congregation./ Yet It appears that very few were naturalized under this Act due to its inconvenience (3). Many attempts were made to have the Act of 13 George II and 30 George III, Chapter 27 repealed in Upper Canada. (4).

In a recommendation of the Legislative Council, it was recommended that these Acts (5) be repealed as being inapplicable to present times and circumstances;and that emigrants after 7 years take the Oath of Allegiance and Abjuration and enjoy the same rights as persons naturalized in England . A draft act with a/recital of the two Acts above, with a provision preventing naturalized subjects holding office or sitting in Parliament was submitted. (6.).

Besides the Naturalization Act of 1828 in Upper Canada about which the above discussions mostly revolved, requiring seven years residence and the Oath of Allegiance for those who could not come under the Act of 1740, or did not desire to, before having the rights of a natural born British subject, we might mention to complete the matter, the Naturalization Acts of 1841 and 1849, which referred to both Provinces, and in the latter Act provided for

1.Can. Archives,Series "Q" 344,I,p. 78.
2.Can.Archives,Series "Q" 343,III,p. 464.
3.Boulton to Horton (1826), Can. Archives,Series "Q" 343,I, p.34 enclosure; also p. 45. See, also "Q" 342,p.100 Wilmot to Horton as to old Statutes being in force and in regard to voting.
4.Bathurst to Maitland. Can.Archives,Series"Q" 340,II,p.368.
5.& Statutes of 1740 and 1783.
6.Colborne to Stanley--enclosing address of Leg. Council for repeal of Acts, Can. Archives,Series "Q",381,III,p.583.

the naturalization of all those who had fixed abode here before 1841; the Act of 1854 reduced the term of residence to five years and the Act of 1858 to three years. This latter act was revised in 1859 whereby any alien residing here before the 18th of January 1849, or who after that day came to settle in any part of Canada, and residing here three years might be naturalized after taking the Oath of Residence and Allegiance. After Confederation the subject of Naaturalized or Aliens was assigned to the Dominion of Canada.

The Act of 1849 was followed by the Acts of 1868 and 1871, and 1881 which repealed the Act of 1740, as well as others, (1)

Those acts of naturalization did not particularly refer to Jews but any Jew might have been naturalized under them providing they complied with the conditions, and thus they would have obtained all the rights of a British subject.

If by naturalization then a Jew had all the rights to vote and sit in Parliament and held office from the beginning of Upper Canada, there would seem to be no question that a Jew born in the Province would have had all these rights by common law, as appears from our discussion in regard to Lower Canada.

If there was any difficulty at all in regard to these rights it would have been because of the necessity of taking oaths which we have outlined in regard to Quebec before 1792.

In Upper Canada we have seen the difficulties of the aliens to hold land, etc. and it has been the

1. Statutes of Upper Canada and after 1867 of Canada for Naturalization Acts: see History of Legislation in Ontario in "Imperial Naturalization & Canadian Naturalization Acts" with minutes & documents, published at Ottawa, 1912.
2. See, supra, p.54; Act of 1881 cited as 44 Victoria, chap.13 (Canada).

law that they are disqualified for public office except for temporary purposes by the Provincial Government, and they cannot vote as members of, or sit in the various Councils or Parliaments.

By the Naturalization Act of 1849, we have seen (1) how aliens were given the right to hold, transmit and devise real estate in the same was as a naturaliborn subject and this right has continued until the present day (2).

From 1865, real estate in Ontario of an alien dying intestate, could descend and be transmitted as in the case of a British Subject (3). By the Naturalization Act of 1881, an alien could hold personal property and dispose of it in the same way as a natural born subject and title from such property may be derived from an alien.

By common law, however, aliens were under no disability in regard to the acquirement of property and chattels personal, and could bring personal actions. (4)

In the instructions of Lord Dorchester, as Governor of Upper Canada and Lower Canada, dated 12th of September, 1791, and particularly in the instructions to Lord Dorchester as Governor of Upper Canada as of September 16th, 1791, the oath of abjuration, etc. was to be administered to the Governor as well as to the Council and also all persons excepting as hereafter mentioned, that shall be appointed to hold any office, place of trust or profit in our said Province, previous to their entering on the execution of duties of said office, excepting Roman Catholics (5). There are

1. Page 58 supra.
2. Aliens Real Property Act, R.S.O., 1927, chap. 136.
3. 1865--29 Victoria (Ontario), chap. 16.
4. Williams Personal Property (1926), p.106.
5. Documents, Constitutional History of Canada, 1791-1818, p. 34.

other provisions in regard to holding of lands which we will discuss later. As the law of England came into force here in 1792, by express enactment, at first glance it might seem that a Jew would not be eligible for such offices in view of the oaths required by English Law, but it can be argued that this law was inapplicable to Jews, at any rate those who were naturalized under the Act of 1740 which was in force here and excepted the Jews from the obnoxious oaths. In view of the Act of 1740, an express Act of the British Parliament, the laws as to the oaths would be inapplicable in regard to natural born Jews. We shall see that at any rate in regard to land this was not at first recognized, and no question came up as to the right to sit in Parliament in regard to Jews. (1)

It is interesting here to point out that Moses David of Detroit, about whom there was some question of his rights to hold land (2) sat on the Jury of Detroit, (which until 1796 was part of Upper Canada) as appears by a list of jurors there in 1794 (3) .

This recognized the law which went back as far as 1766, when an ordinance of July 1st of that year in regard to juries - laid it down "that all His Majesty's subjects in the Province of Quebec, without distinction, are entitled to be impanelled and to sit and act as jurors in all causes, civil and criminal." (4)

It might be in place here also to point out that the Barristers and advocates took the oaths of abjuration and allegiance, and supremacy and signed the declaration against trans-substantiation, except the Roman Catholics, before being put on the rolls as advocate and attorney. Here too those entitled to be licensed by the Governor or Lieutenant-Governor were to be British

1. See, Chapter on Land holding by Jews in Upper Canada.
2. See, p. 196, foll. ff.
3. Ontario Archives Report 1917. Records of the Early Courts of Justice of Upper Canada, p.175.
4. Ibid. Introduction Riddell, p.13.

subjects. The oath against trans-substantiation continued to appear in the rolls up to May 1st, 1833, when it no longer appears. (1).

The above arguments might have been applied to a Jew who desired to become a barrister and advocate. Yet all these questions were set at rest by an Act of Upper Canada, 3 William IV, Chapter 12, passed on the 13th of February, 1833, which was an act to dispose of the necessity of taking certain oaths and making certain declarations, in cases therein mentioned and also to receive the sacrament of Lord Supper as qualification for office or for other temporal purposes; The Act recited that it was inexpedient to impose upon persons admitted to office in this Province, or persons called to the Bar and admitted as attorney or become officers or members of any corporation, the necessity of taking oaths and making certain declarations which have heretofore been usually required in such cases.

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 then 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 Gold."

An additional clause was added which said that no person was obliged to take the sacrament for purposes of office. This was later confirmed by the 13 and 14 Victoria, Chapter 18, 1850, which made this law applicable to the whole Province of Canada.

1. Riddell, Legal Profession in Upper Canada, 1916, pp. 9 & 147.

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. (1).

By the Act of 1851, which I have mentioned before, the law recognized by statute that it was an admitted principle of colonial legislation and a fundamental principle of our civil policy that there be legal equality among all religious denominations and the free exercise of religious worship as a result of religious belief. This principle was further confirmed in an Act in regard to Rectories in the Consolidated Statutes of Canada, (1859) Chapter 74, Section 1, also in 1877 Revised Statutes of Ontario, 1914, and will be discussed under Community status.

1. Keele, Provincial Justice--"Oath"--published in 1835 as a compendium of practice and a summary of law; see, Frank vs. Carson, U.C.C.P.,p. 135.
See, Crankshaw Magistrates Manual,1921,3"edition,p.221.

COMMUNITY STATUS

We have seen the principle clearly established that the fundamental law of the Province of Ontario makes no distinction between churches and denominations, and that every person is at liberty to worship his Maker in the way he pleases.[1] The casesin our Courts establish that Christianity is not part of the law of England or Ontario, and that Churches in Ontario have no connection with the State. The law looks upon them as voluntary associations united for religious purposes and subject to no control in discipline, selection or appointment of ministers, and other matters connected with their religious organization other than that the people have chosen to confer on persons or bodies of their own denominations.

The rules adopted for the purpose of appointment of Ministers and other purposes derive their force only from the voluntary assent for the purposes of the Church and are governed by the rules of contract. All religious bodies in Ontario are placed on a footing of equality before the law, no other denominations have any preference over another and no test is required to qualify for any office or trust, hence any close relation between civil government and Church polity is rendered impossible and interference by the laws is greatly restricted with individual faith, and the affairs of the organization.

A Church within the meaning of the Marriage Act connotes some recognized body having an organization with rights and ceremonies, and the civil courts of Ontario will not entertain disputes relating to a Church where no civil rights have been invaded nor interfered with the manner in which a religious body exeercises disciplinary

1. Pages 54 & 55 supra.

power and provided they are within the power of the domestic form exercising same. (1).

This statement of the law is based on cases such as Pringle against Napanee, 43 U.C. QBR. 1878, Page 291. It holds that since the passing of the Statute Chapter 74 , of the Consolidated Statute of Canada (1859) in both the Province of Ontario and Quebec, there is not even the semblance of any connection between Church and State.

The judgment mentions that this section in regard to equality of religion was borrowed from the Act of the Legislature of New York, 1771 and argued that the term 'religious profession' did not mean the Christian religion only, but should extend to Jews or any species of faith and worship. (2) See also Rex vs. Dixout, (1893, 24 Ontario Reports Page 250-254) where it was held that the reorganization Church of Jesus Christ of Latter Day Saints is a religious deconimation within R.S.O. Chapter 131, Section,1, where the words used are Church and religious denomination and the latter should not be confined to Christian bodies.

Armour, C.J., in his judgment, makes the following statement of Law: "The Statute should receive wide construction. It does not say Christian but religion. If it said Christian it would exclude Jews. The fundamental law of the Province makes no distinction between churches and denomination. Every person is at liberty to worship his Maker in the way he pleases. We have, or ought to have, perfect freedom of speach and perfect freedom of worship".

1. Canadian Encyclopedic Digest,Ontario section under Religious Institutions,p. 351.
2. See, also Bowman & Secular Society Ltd.,1917,A.C.408.

In Dummet vs. Forneri, 1872, 25, Grants Chancery 199& 205, Proudfoot, V.C. mentioned the Act of 1851 recognizing that legal equality among all religious denomination, is the admitted principle of Colonial legislation and a fundamental principle of our civil policy. He also refers to other acts, including the constitutional Act of 1791, and in his judgment says that the affect of all these enactments is to place all religious bodies upon a footing of equality before the law.

This then is the general law affecting Jewish religious bodies and religion in Ontario, but let it not be supposed that that law was not the result of a long struggle between many Christian denominations themselves. This rather than any Jewish question necessitated the broad stand in regligious matters, but this is too long a story to enter into now.

In regard to the more specific civil rights a religious corporation could not hold land in Ontario because of the statutes of Mortmain which were held to be in force in Ontario (1) but the effect of this statute was diminished by various acts relating to particular religious bodies so as to allow these corporations to hold land for their own purposes in perpetuity as corporate entities. The Mortmain and Charitable Uses Act 1927 (2) states that land shall not be assured to or for the benefit of, or acquired by or on behalf of any corporation in Mortmain, otherwise then under the authority of a license from his Majesty or of a statute for the time being in force and provides for forfeiture of if so done.

A long series of Acts started from 1828 (9 George IV, Chapter 2) providing relief for various

1. See, supra, p.155; also, Armour, Real Property, p.301.
2. First enacted in 1892--Victoria, chap. 20, now R.S.O., 1927, chap. 132, sec. 2.

denominations of Christians allowing lands to be held for their use by Trustees and their successors in perpetual succession and to allow actions to be taken for the protection thereof, and recites "whereas religious societies for various denominations of Christians find difficulty in securing the title of land requisite for want of a corporate capcity to take and hold same in perpetual capacity".

The Act of 1828 was amended by an Act of 1840 widening this right and extending it to Roman Catholics. This was contained in the Consolidated Statutes of 1859, Chapter 69, widening the powers of the above acts, including the right to lease, mortgage and sell until the Act was extended to Jews by 53 Victoria Chapter 74, assented on the 7th of April, 1890. This was an Act for the relief of persons professing the Jewish religion, enacted as follows:-

"All the rights, powers and privileges conferred upon any religious society or congregation of Christian by revised Statutes Chapter 237 (1887) entitled an Act respecting the property of religious institutions are hereby extended and shall hereafter apply to any religious Society or congregation of Jews. This special provision for Jews was continued throughout the various Statutes and is contained in Revised Statutes of Ontario, 1897, Chapter 307, last section, to date. (1).

The Act of religious corporations was widened to the general terms by a General Act, Revised Statutes of Ontario, Chapter 286.

Burial grounds were extended in 1850, by Act 13 and 14 Victoria, Chapter 177; assented to on the 10th of August, 1850. An Act to permit lands in Upper Canada to be conveyed to trustees for burial places, and recited "Whereas in many parts of Upper Canada the inhabitants

1. R.S.O.,1927, Chap. 344, sec. 21.

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 enacted 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 purpose 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. 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 (1).

This Act in regard to cemetries was continued throughout the statute books and is now embodied in the Cemetery Act, Revised Statutes of Ontario 1927, Chapter 317, Section 42.

The first record of any communal activity by the Jews of Toronto and Upper Canada is that of a transfer of land for burial grounds in 1849 from the Hon. John Beverley Robinson to Judah C. Joseph and Abraham Nordheimer as trustees for the Hebrew Congregation of Toronto (2) and being on Pape Avenue, the present site of the old Holy Blossom Cemetery.

But communial life really began when the 'Sons of Israel of the City of Toronto had their first meeting on September 7th, 1856'. Due to the increase

1. Supra, p. 69.
2. Registry office, City of Toronto #69381, part of lot 12, Concession 1, Township of North York. Also, Jew in Canada, p. 105--for a history of Holy Blossom Toronto Hebrew Congregation; Original minutes of Congregation from 1856 on; other papers & documents of the synagogue have been of assistance in writing this account of community life in Toronto.

of persons of the Jewish Creed becoming inhabitants of Toronto, it was thought most proper that a congregation be formed. The above name was changed to "The Holy Blossom" Toronto Hebrew Congregation in 1869 and later the same name was used only the title was reversed.

As early as 1850 Jews were buried in the Cemetery. Simeon Alfred Joseph died on September 17th, 1850, Lewis, son of Joseph Lyons, on February 1st, 1859, J. C. Joseph on May 12th, 1852 and Chrlotte Nordheimer ~~on May 18th~~, Aged 9 years; on February 27, 1855: also one Davis in 1851. The latter's gravestone is scarcely legible.

It is difficult to determine when the cemetery really was transferred to the congregation as formed, as there is no transfer of the deed registered. The minutes of April 3rd, 1859, refer to the report of Mr. Lyons that in consequence of the Chief Justice being out of town, the papers for the transfer of the Burial grounds were again deferred. There were negotiations to acquire it and it became part of the congregation's property and remains so to-day, together with an additional piece of land acquired on December 12th, 1903 by the Trustees from one Woodward. (1)

This is not the place to discuss the life of the Jewish Community, but it might be of interest to note the autocratic control over the members of the Congregation. Fines for smoking in the hall during divine worship or for non-attendance without a proper excuse were not infrequent and the bylaws by 1857 regulated these matters. ~~Although the Congregation, as such, would not have had the power to hold these lands there seems to be nothing on the Minutes which tell how they were held.~~

1. Deed registered in Registry office; see, note (2) p.171.

One of the privileges of membership was to be supplied Kosher meat at a stated price, regulated by the trustees or by the Congregation. In the early days there was a non-Jewish butcher, Hutty, who worked under a written agreement with the Congregation, and any expelled member suffered an increase of price for his meat. By 1857 there was a penny tax for Kosher meat.

I have mentioned these facts to show how the congregation became an entity in itself and taking domestic powers UNTO itself. They hired a shochet, mohel, etc. for their purposes.

That matters didn't always run smoothly appears from the minutes of April 3,1858: "The President informed the members that the law suit pending between Mintz and the Congregation was amicably settled. (We have searched the Court records but have been unable to locate the writ herein). It would seem as in Montreal that the domestic form did not deprive them of the right to have one's case adjudicated in the usual way, and in civil matters. This is the first lawsuit in which the Jewish Community was involved.

The Congregation was presented with two lots of land situated near the Depot in Berlin by John Jacobs as a present to the Congregation towards building a new schule (October 4,1857) which were later sold. Although the Congregation, as such, would not have had the power to hold these lands--there seems to be nothing in the minutes which tell how they were held.

It would seem that the Government was favorably disposed to the Jews, because in 1863 The Hamilton Congregation, which was incorporated by the Parliament of Canada in May 5th, 1863, under Anshe Sholom Congregation was the first incorporated Jewish body in Ontario (1). The incorporation gave power to hold property not exceeding $5000. in value to be used for the purposes of a cemetery and synagogue. In 1857 by Deed of June 18th, Michael Burkholder in the Township of Barton, County of Wentworth sold to Samuel Boehn, Isaac Shire, Samuel Desbecker, Henry Zinsheimer, Mbraham Moyer et.al. of Hamilton, in trust for the use of Hamilton Burial Society for $30, one-half acre of land in the Township of Barton, and on August 23rd, 1864, the same party sold an additional one-quarter acre adjoining the other lot to David Hammel, Jacob Hammel, Louis Cross and Louis Sachs, trustees of the Keshev Shel Barsell Benevolent Society for Sixty Dollars (there stated to have been sold to Anshe Sholem Society)and both are now used as such by the Congregation. (2)

Early graves: Some of the early graves are in Hebrew and the inscriptions are almost obliterated. We find those of Daughter of M. Daniel 5619-1859
" " Shemuel Chayim Bell 5620-1860
The first in English -Olga Rosenband, daughter of L. Rosenband, died in May 14th, 1862,

The next Mrs. Caroline Manuel Levy, died December 27th, 1862 and Amelia, wife of Sigismond Drey, died November 12th, 1862 at age of 23.

Jews located there in the early 50's.

In 1863 - a Charter was given to Jacob Frey, Isaac Levy, Henry Zinsheimer, Samuel Desbecker, Leopold Rosenband, Daniel Shire, Simon Shire, Isaac Shire, Leopold Loeb,

1. See, Appendix, p. 255.
2. Information supplied by Mr. Edmund Sheuer, former president of the Congregation.

William Loeb, Mendel Levy, Abraham Levy, Herman Levy, Jonas Draenger, Solomon Unger, Herman Wolf, Bernhard Weinberg, Abraham Saim(Simon) Louis Daniels. This incorporation made it possible to hold land by trustees in perpetuity and not by trustees personally.

Toronto, desiring to hold their cemetery in a similar way considered the advisability of such a step, and the Secretary, in a meeting of July 19th, 5623, brought forward the serious question of chartering the schule, but the expense incidental thereto caused them to hesitate. They resolved to write Hamilton to gather the necessary information. Again, on August 2nd, 1863, the minutes show that as no answer was received from Hamilton, and it was resolved to write the German Congregation in Montreal in regard to same. On August 9th, 5623, the Secretary wrote the Clerk of Interior at Quebec in regard to incorporation. On February 9th, 1868, the question of the Charter was brought up on account of the "future possession of Burial ground".

Nothing was done no doubt due to the expense until later, but there is no question that incorporation could have been had if they had so desired.

In the meantime (1) the Congregation acquired property through Trustees who could have conveyed according to their trusts, or else with the consent of all by law. There was really no disability at most inconvenience.

The first land was purchased in 1855 on Richmond Street (now part of Shea's Theatre). Lewis Samuel purchased the lot for and on behalf of the Congregation for $6000. for trusts to the use by the Trustees so long as the congregation continues to worship according

1. The Congregation was finally incorporated; see, ante, p. 175.

to the doctrines, rules, forms and ceremonies known and recognized as the Jewish religion as the orthodox Minhag. In default any other congregation so conforming could have the land. There was a proviso for the sale, lease or mortgage, except that the consent of the meeting of the Congregation was necessary. This meeting was to be called by written notice, signed by at least two Trustees and affixed to the door of the house or usual place of worship of the said Congregation upon two Sabbath days (two Saturdays) preceding the day of such meeting. There was also a provision for the election of Trustees if any ceased to be a member of the Jewish religion, according to the said Orthodox Minhag. The land to which this Deed referred was on the south side of Richmond Street, part of the present Shea's Theatre and was known as Richmond Street Synagogue. This property was transferred to Mark Kassel, et. al. on the 11th of September, 1875, as Trustee, subject to the above trust. These Trustees were changed from time to time. (1)

In 1890, the Act respecting Religious Institutions was extended to Jews and the Congregation desired incorporation under the name of The Toronto Hebrew Congregation "Holy Blossom". This seemed, however, to be under the Act respecting Benevolent Provident and other societies, Chapter 172 for the following purpose:

The purpose is the practice of Divine Worship as a Hebrew Congregation according to the Jewish Faith. (2). When the Congregation desired to sell the Richmond Street property, and buy land on Bond Street (the present site) they were chartered under the Religious Institutions

1. From deeds in Registry office, Toronto; see deed 11512 E.T. There are duplicates in the Archives of the Synagogue.
2. Documents in Synagogue Archives.

Act in 1894. A Private Bill 57, Victoria 1894, Chapter 101, was passed in the Ontario Legislature to clear the title to the Richmond Street property, vest the land in the Trustees under the Act respecting Religious Institutions, subject to the above trusts, and enacting that members and meetings are governed in accordance with the rules and by laws of the Congregation. In other words, the Government acknowledged the right to hold lands subject to the religious practices in perpetuity.

Another Act, 2 Edward VII, 1902, Chapter 112, was necessary to authorize the Trustees of the Holy Blossom to convey the lands free of trusts.

The Holy Blossom Synagogue is to-day a Reformed Congregation.

University Avenue Synagogue (Goel Tzedec Congregation) started in 1883, purchasing a building corner University and Elm Street in 1884 for $4100.00. In 1906 it purchased land on University Avenue. In 1896 the Congregation was incorporated and is Orthodox. Since then many congregations have sprung up in Toronto and other places in Ontario.

IX.

MARRIAGE LAWS IN UPPER CANADA IN REGARD TO JEWS AFFECTING CIVIL RIGHTS.

By the common law of England, the presence of a clergyman in Holy orders, either of the Church of England, or of the Church of Rome, was necessary to solemnize the marriage, yet marriage by a minister or other official of a Religious body, was valid for most purposes as the marriage was irregular only, not void. Such a marriage deprived the surviving husband of letters of administration to the estate of his deceased wife, (and there has been much discussion as to the effect of these marriages), together with other considerations not necessary to go into here, except to mention that these irregular marriages were followed by the Jews. (1).

Lord Hardwick's Act of 1753, 26 George 2, Chapter 33 was passed to get rid of irregular marriages altogether, but it seems that marriages of Jews and Quakers were excepted from the Act. Section 18 reads: "Provided likewise that nothing in this Act contained shall extend to that part of Great Britain, called Scotland, nor to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion, respectively, nor to any marriages solemnized beyond the seas."

According to Mr. Justice Riddell, this has always been considered a recognition by Parliament of the validity of Quakers and Jews marriages although the Act contains no language to that effect and simply left it as before.

He considers the reason for not enacting the validity of these marriages expressly was due to the fact that the action of the legislation was in regard to

1. Riddell, Quaker Marriages in Upper Canada, Ontario Hist. Society, vol. 24, p. 507. See, Quebec Official Law Reports, General Index, 1898-1908 under "Marriage" as to law of England in force in Canada.

2. Riddell, see note 1, supra.

clandestine marriages alone and there was nothing clandestine, particularly about Quaker Marriages.

The Criminal and Civil laws of England were introduced into the Province of Quebec by Royal Proclamation, October 17th, 1763, the definition of whose boundaries was extended in the Act of 1774 to include the Province of Upper Canada, and by which act, French Civil Law and English Criminal Law came into force. In 1792 by 32 George III, Chapter 1, as we have stated before, the English Civil law in regard to Civil and property rights became in force from October 15th, 1792, and the Act of 1800, 40 George III, Chapter 1, expressly made the Criminal law of England in force, therefore the law of England under the Hardwick Act in regard to marriages would make Jewish marriages valid here, without any legislation at all, provided there was no legislation prohibiting Jewish marriage ceremonies. (1).

In a review of the legislation and documentary evidence, we see no such prohibition. In fact, we see, on the other hand, recognition of the Act of 1753.

The first act in regard to marriages in Upper Canada was the Act of 33 George III, Chapter 5, 1793, validating irregular marriages which had been solemnized before a Magistrate or Commander of a post of adjutant or sergeant of a regiment acting as chaplain or any other person in public office and also provides for marriages by a Justice of the Peace under certain conditions.

The next act was 38 George III, Chapter 4, 1798, enabling and authorizing the ministers and clergymen of any congregation or religious community of persons professing to be members of the Church of Scotland

1. See, Riddell above article.

or Lutherans or Calvinists upon receiving a certificate from the quarter sessions.

After these acts, the question of marriages in Upper Canada was considered by the Home Government. In 1817, Earl Bathurst, Colonial Secretary, wrote circular letters to the various colonies and dependencies of Great Britain, asking that the Lieutenant-Governor, together with the law officers of the colonies transmit him some of the regulations and laws in force with respect to the form and manner in which such marriages have been celebrated and the authority for same. This letter was received by the Lieutenant-Governor of Upper Canada in 1817 (1) and was transmitted by the Lieutenant-Governor to the Attorney-General. This correspondence would seem to remove any doubt as to whether the provisions of the Act of 1753 in regard to Jews and Quakers was recognized or overlooked in Upper Canada. (2).

The following is the Attorney-General's opinion in full:- (3)

"

Attorney-General's Office,
York, 8th of July, 1817.

to Lieutenant-Colonel Cameron,
Secretary.

Sir:

In reply to your letter of the 6th ultimo, conveying the directions of His Excellency the Lieutenant-Governor that I should take the necessary steps to carry into effect the intentions of Earl Bathurst relative to the laws and ordinances which may be in force within this Province with respect to the form and manner in which marriages should be celebrated

1.Bathurst to Gore. G.56,p.137-139. Can. Archives.
2.Cf. Riddell,Criminal Law in reference to marriage in Upper Canada, Ontario Hist. Society Papers,etc.,vol.21, p. 234,(note)that the exceptionx in favor of Jews and Quakers escaped attention in Upper Canada.
3.Can.Archives Series "Q" vol. 322, 1-2, p. 216. Mr. Sack,p.41,Jew in Canada, refers to this opinion to show that Jews by inference must have been in Toronto, but this does not necessarily follow.

communicated to His Excellency by His Lordship's letter dated Downing Street, 11th March, 1817.

I beg leave to state that the Provincial laws in force which apply to the celebration of marriages are contained in the accompanying statutes, viz: the 33rd George III, Chapter 5 and 38 George III Chapter 4, 1793, marriages in consequence in this colony are celebrated under the form prescribed by those 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,

I have, etc.,

(signed) D'Arcy Boulton,
Attorney-General."

In a later letter from Earl Bathurst to Maitland, in regard to marriage laws in force in this colony, but here particularly for ministers of the Church of Scotland, the Attorney-General's opinion of July 20th, 1826 was enclosed (1), which puts beyond doubt, it seems, any question as to whether the Act of 1753 of England was in force here.

After referring to the early acts of 1793 and 1798, the opinion stated that it seems to have been considered from the earliest period either that marriage was to be considered as a civil contract, conferring civil rights, and that being so, the Law of England respecting it had by our adoption of it become the law of this Province, or that punishment of its illegal solemnization formed part of the criminal law of England, and the same offences there would be those

1. Can. Archives, Series "Q", pp. 53 & 55.

here also due to adoption of English law; the British Marriage Act, 26 George II was in force here -- and in 1793 an Act was passed, etc., to overcome strict compliance with the English Marriage Act.

The Act of 1830- II George 4, Chapter 36 extended this right to others and then was later extended by 1845 - 8 Victoria Chapter 34, and by 1847 10 and 11 Victoria, Chapter 18, to those of all religious denominations of Christians, without any certificates from the quarter sessions. In all those Acts no mention was made of the Quakers or Jews and ipso facto it would seem the right to perform marriages would remain under the English Act. As, however, there were only a handful of Jews in Upper Canada in 1850 (a larger number coming in the fifties) this law was probably not considered by the Jews living here. However, in 1856, by the Act of 20 Victoria, Chapter 66, Canada no doubt as a result of the Act giving religious equality to all groups (1), all religious denominations of the Province became so entitled. This Act was assented to on the 10th of June, 1857 and it enacts "From and after the passing of this act the ministers and clergymen of all religious denominations in Upper Canada duly ordained or appointed, according to the rights and ceremonies of the Church or denomination to which they shall respectively belong, and resident in Upper Canada, shall have the right to solemnize the ceremony of matrimony according to the rights, ceremonies and usages of such churches and denominations respectively, by virtue of such ordination or appointment."

And provision is made for registering names in a book and validating any Quaker marriages to be made. (2).

1. Act of 1851 supra, pp. 54 & 55.
2. Cf. Riddell's article supra. He states the first legislation in regard to Quakers marriages in Ontario was in 1891 by 54 Victoria, chap. 23.

There would seem to be no question that under this Act Jews would be considered a religious denomination (1) and as a matter of fact was, as appears by the exhibit of Marriage Register, attached in the appendix, in which register is a copy of the first page of the Register of marriages by the Jewish community. This is the official register under the Act and recites this act on the title page in full. There is only one sheet of this book used and no doubt the first marriages were recorded therein. (2)

This interpretation is confirmed by the case of Regina against Dickout, 1893, 24 Ontario Reports, Page 250, a case in which the interpretation of the words "a religious denomination" came into question.

This was a criminal case in which the accused was charged with performing a ceremony without authority, being of the reorganized Church of Jesus Christ of Latter Day Saints which, it was alleged, was not a religious denomination within the R.S.O. 1887, Chapter 131, Section 1 (being the same wording as in the Act of 1857). It was held that this Church was a religious denomination within the mention of the words 'Church and Religious Denomination" and that these words should not be confined to Christian bodies. (3)

1. Otherwise the word "Christian" would have been continued from the earlier Statutes.
2. See, Appendix, p. 340.
3. See, Supra, p. 168.

The wording of this judgment seems to imply that Jews had been performing marriages under the Act as of right. At any rate, this judgment would have set any doubt, if there had been any, at rest.

Mr. Justice Riddell, in his Article, Page 507, no doubt by error, mentions that the Statute in regard to Quakers, in 1891, was by this case interpreted to include Jews and Latter Day Saints. The wording of the Act of 1857 continues throughout the Statute to the present time, in 1927 Revised Statutes of Ontario. (1)

In discussing the marriage laws, it is interesting to refer to the case of Frank against Carson (2) which held that a written contract was not essential to the validity of a Jewish marriage, which had been solemnized with all the usual forms and ceremonies of the Jewish services and faith, and that such a marriage was valid.

The criminal law of England, as mentioned before, was in force in Upper Canada, and the provision of Lord Hardwick's Act made it a felony to pefform marriages in certain parts. The punishment for this being fourteen years transportation to the American Colonies.

We have seen that this Act excepted the Jews and Quakers, therefore the punishment which by an Act XIX, George III, Chapter 1, substituted banishment from the Province for transportation, could not have affected the Jews (3) and similarly in regard to the law of 1822 2 George II, Chapter 11, which made it a misdemeanour for any unauthorized person to solemnize marriage without a license.

1. Chap. 47, sec. 1.
2. 15 U.C.C.P., p. 134.
3. See, Riddell, Criminal Law in regard to Marriages in Upper Canada, 21 Ontario Hist. Society Records.

Therefore, we see that Jews had always the right to have marriages solemnized from the beginning of the formation of this Province, in view of the English Statute above mentioned, which was recognized in force here).

The question was put at rest by the Statute of 1857 of Upper Canada in regard to the solemnizing of marriages and confirmed by the cases. It might be noted here that unlike the Province of Lower Canada, the Statute read that the marriage was to be solemnized by a person resident in the Province, duly ordained or appointed according to the rights and ceremonies of the Church or Denomination, or by Ministers and Clergymen of every religious denomination. This did not oblige the person to be a British subject.

In view of the wording of this clause, some doubt has arisen as to whether a person is qualified by receiving semicha from the local Rabbis without having been ordained and whether this semicha would be within the terms"ordained or appointed according to the rights or ceremonies of the Church", but this matter has not been settled.

X

STATUS OF THE KEHILLAH

Prior to 1922 there was no Kehillah organized in Toronto, but on the 24th of October, 1923, a Charter was obtained from the Province of Ontario for the following objects:

To supervise the slaughtering of cattle for Kosher meat, the said Kosher meat being for consumption by the Jewish people of Toronto, and to see that the said Kosher meat is prepared according to the Jewish rites and to apply any surplus of money, proceeds of such slaughtering, to public charity.

Opposition was aroused by the fact that independent schochtim were not permitted to slaughter in the City Abbatoir. In 1925, a Schochet called Orliansky, sued the City of Toronto for the right to enter the civic abbatoir and kill cattle there, the City having refused him permission. The contending parties, by consent, submitted their case before Mr. Justice Middleton who held that citizens have the right to take cattle to the abbatoir to be killed but not that anyone who has or thinks he has ability to kill may go there and demand the right to kill. (1)

In the same year, a butcher, Jacob Cohen, sued in the Supreme Court the Kehillah for libel, because they had published in the newspaper that his meat was treif. The matter was heard by Mr. Justice Wright. The issues were - did the Rabbis have the right, according to their religious requirements, of announcing their opinion to the Jewish public? The Judge decided after the trial had progressed that it was a religious question he could not settle and sent the matter for adjudication to a tribunal of Rabbis. (2).

1. Orliansky vs. City of Toronto 26 O.W.R. p. 249; appeal dismissed, p. 387.
2. Letter from H.S. Rosenberg--see, Appendix, p. 355.

According to the opinion of Mr. Henry S. Rosenberg, solicitor in the case, this "might be an indirect recognition of the right of the Jewish people to have religious autonomy. (1).

In Ottawa a similar case was heard by Lennox, J. that of Udilsky vs. Ottawa Vaad Hakashres. The Plaintiff, a Jewish retail butcher sued the defendants Mintz & Berger, Rabbis, and the incorporated body formed of lay representatives of several synagogues for slander on refusal to raise the price of meat. It was alleged the defendants caused Schochtim and wholesale Kosher dealers to refuse supplies to him and that the Rabbis published the decision of the Vaad in their synagogue to the effect that the Plaintiff lost his trustworthiness on Kashera. The Defendants pleaded that all that was done in accordance with the Hebrew Law; that it was the strict requirement of Hebrew Law that no Hebrew shall sell meat not koshered or killed by schochtim, who are religious officers appointed in each community for the purpose, and it was the right of the Vaad and the Rabbis to investigate charges under the law. This was done and he was found guilty by the them. The rise of the prices, the Rabbis claimed, was necessary, as it was impossible to sell Koshered meat for less. Also a hind portion was found in the shop, and they claimed that all this was done under privilege and without malice, and in accordance with Hebrew Law.

The trial Judge held that occasions on which the words spoken were privileged and withdrew from the jury the question of conspiracy, but evidence of malice was allowed to the Jury. The Jury rendered a verdict of damages for slander and there was a cross-appeal by the plaintiff on conspiracy. Latchford, Chief Justice, on appeal to the Divisional Court, giving the judgment of the Court, granted a new trial on issue of both conspiracy and slander, and said "Unless the Rabbis participated in a conspiracy which under the pretense of enforcement

1. See, Appendix, p. 355

of the Jewish law really sought to compel the plaintiff to increase the price, and that attempt failing to destroy his reputation as a Hebrew and wreck his business the publication made to their respective congregations may have been absolutely privileged." (1)

Last Spring the Kehillah question came to the fore again as a result of the fact that the City Council had granted, as a matter of convenience, the right to kill cattle at the civic abbatoir, and an organization known as the United Jewry of Toronto (Vaad Hayin) had received a Charter on the 6th of November, 1931 to supervise the slaughtering and sale of cattle and fowl in accordance with the Jewish religion and to protect the Jewish Community in the matter of all foodstuffs embraced by the Mosaic Law, etc.; but unlike the Kehillah there were no mention of giving proceeds to public charity. This organization was in opposition to the Kehillah and were one of the complainants in charges made before the City Council that certain schochtim employed at the Municipal Abbatoir for the Jewish trade have refused to slaughter for some butchers because they had not entered into an agreement with the Central Butchers Association or the Central Butchers of Toronto alleged to be in concert with the Kehillah, and that the prices charged by the Kehillah or its Schochtim for slaughtering at the abbatoir were exhorbitant and unreasonable, and tended to unnecessarily increase the price of Kosher meat - Charges of combine, etc. were also made.

At a meeting held by the City Council of Toronto on the 22nd of February, 1932, a resolution was adopted pursuant to Section 257 of the Municipal Act

1. 1926-31 Own.,p. 189.

Revised Statutes of Ontario, 1927, Chapter 33 to investigate the above matters, and Judge Tytler was appointed as Royal Commissioner and sittings were held on twelve days during the period from March 14th 1932 to May 16th, 1932, and after the Judge was unable to bring the parties together to settle their differences, the sittings resumed on May 3rd. Evidence was given in regard to the whole conduct of the Kehillah and fifty-five witnesses were called. Religious law and questions came up which were discussed in the judgment and the Kehillah as such was exonerated from any misappropriation, etc. The complainant claimed that the law of the land prevailed and not Hebrew law.

In summing up, Judge Tytler held, among other things, in his report, as follows -

"I see no reason why the Jewish people in Toronto should not get together and arrange for a harmonious working of the Kehillah. It will be for them to fix the prices to be charged for the Koshered meat, how many shochtim should be employed, what they should be paid, how many rabbis will be required and their remuneration, and if they intend to have sufficient charged for the Koshering to be able to give the school and charitable institutions of their own denominations, or others, if they feel so disposed, to fix the amount that should be given, or any other arrangement suitable to the Jewish people."

Without finding what the law is in reference to the power of the Kehilla, I think from what I can gather from what was said by the different rabbis and the references to Jewish works in connection with it, that when the Kehilla is formed by a majority of the Jewish

people at a duly represented meeting, that the Kehillah has full power in connection with the appointing of Schochtim, the slaughtering and killing of animals and koshering of the meat, and that no other Rabbi, either in a minority as to his opinion, or one who is not a member of the Kehillah, has any power to enforce his opinions. But I do think that the Rabbis, instead of attempting to enforce the full letter of the law, they should in a much milder way than advertising as they did in the Jewish Journal, and remember the injunction of their prophets- "What doth the Lord require of them but to do justly, love, mercy and to walk humbly with their God".

As to the Board of Control and City Council he holds -

"They have the right to choose their tenant or tenants, and to lease or rent such portion of the Municipal Abbatoir to whatever person or corporation they desire at such rental and for such time as may be arranged. They can rent various portions to different individuals or corporations. It seems to me, however, that it would be very difficult for the Board and Council to take upon themselves to fix the price of Koshering. That is a matter of internal arrangement between the Jewish people; but it would be well to make such arrangement as might be agreeable to the different parties so as to do away with undue competition in regard to the prices of Koshering" - (1).

Recently the Kehillah obtained an interim injunction from Mr. Justice McEvoy in the Supreme Court restraining one Joseph Abrams from being concerned in

1. The above facts and judgment are from original files of H.S. Rosenberg, solicitor in the Kehilah.

the k lling and selling of Kosher meat, except such meat as is killed by the Schochtim of the Kehillah of Toronto and declared to be Kosher.

On a motion to dissolve this injunction before Mr. Justice Kerwin, which was granted, it was successfully argued that no Institution, the Kehillah of Toronto or anybody else, has any right to interfere with any person's right to kill under the Mosaic Code. Justice Kerwin said he was satisfied Abrams had shown a prima facie case, to be entitled to carry on business.(1) The Hebrew Journal published the decision of the Kehillah in their papers against Abrams, but on receiving notice under the Libel and Slander Act, we are informed they have discontinued putting in the advertisement.

We see, therefore, that neither the law nor the matters are as yet settled to entitle one to give any opinion thereon.

It seems, however, the law has not as yet recognized the Kehillah as having legal power to enforce its decisions and legislate for the community, unless the Orthodox Community consented, and that the matter could always be brought to Court. Yet, the fact is that the Municipal Government of the City of Toronto recognizes The Kehillah with whom they deal in questions of killing of cattle for Jewish people and resolutions of the Board of Control are to that effect. (2). This was recognized by the report of Judge Tytler. There is, as we have seen, a recognition of the right, though not directly laid down in law, of the Jewish

1. See, Toronto Daily Star, August 23,1933.
2. See opinion of H.S.Rosenberg,appendix.

people to have religious autonomy such as in regards to the question of whether the Rabbis have the right or privilege of announcing to their congregation and to the press their findings as to the fitness of a person to sell Kosher meat, etc.

XI

CIVIL RIGHTS IN REGARD TO THE HOLDING LAND BY JEWS IN UPPER CANADA.

When the British acquired New France in 1763, the Proclamation of 1763 was the first document in regard to land giving the power of the Governor and Councils to settle and agree with the inhabitants or any other person who shall resort thereto for lands, etc. The policy seems to have been to encourage emigration from Britain and from the older colonies in America (1) and to provide land for disbanded officers and soldiers.

The instructions to Governor-General Murray on the 7th of December, 1763 put the words of the proclamation into effect and made various regulations in regard to land which formed the basis upon which later regulations in Upper Canada were to be based. The Authorities tried to avoid the obtaining of land for speculative purposes, and desired to encourage the settlement and cultivation of the land. (2).

Further instructions were given to Guy Carleton on January 3rd, 1775, and additional instructions to Frederick Haldimand, Governors in Quebec, and in these instructions the Oath of Allegiance was prescribed for the recipients of grants. (3).

In view of the fact that after the revolutionary war was over many loyalists came into the country, further provisions were made for officers and soldiers. In the meantime settlements in what is now Upper Canada had taken place in the Niagara District and above Ottawa.

In the instructions of General Haldimand of 1783, (4) there was a provision that every applicant for land was to take the oaths directed by law and sign a declaration of allegiance in the following terms:

1. Patterson, Land Settlement in Upper Canada, Ontario Archives Report,1920, p. 18.
2. Instructions to Murray, supra, p. 11, note 2.
3. Instructions to Carleton, Ontario Archives Reports,1905, p. lxi (also,1906,p.60).
4. Instructions to Haldimand,16 July 1783,ibid,1906,p.lxii.

"I, A. B. do promise and declare I will maintain and defend to the utmost of my power the authority of the King and his Parliament as a supreme legislature of this Province."

This was also in the additional instructions given on 23rd of August, 1786. (1)

In 1786, Carleton, now Lord Dorchester, received instructions with the same provision in regard to oaths, and varying some of the regulations in regard to soldiers.

On February 17th, 1789, landboards were established in each district to facilitate the grants of land and the authority of this Board continued up to May 1st, 1791. At these meetings the loyalty, character and pretention of each petitioner were to be examined first and the Oath of Fidelity and allegiance were to be administered. Lands were to be granted to all his Majesty's subjects. (2)

The official forms used by these landboards say that "the oath of fidelity and allegiance directed by law, were administered by the Board (see Ontario Archives 1905, LXXIII, and also stated that the lands were not transferrable. This was therefore the situation before 1791 and up to this time there were only a few settlements in what is now Upper Canada, the Toronto district not yet having been touched.

On the formation of the two provinces of Upper and Lower Canada in 1791, the lands in the Province of Upper Canada were to be granted in full and common soccage as in England, by instructions to Lord Dorchester as Governor of Upper Canada on the 16th of December, 1791. (3)

The only disability that might have been considered to attach to Jews would be section 35, which contains the

1. Instructions to Carleton, 23 August 1786, Ontario Archives Report, 1905, p. lxvi; also Const. Documents, Short & Doughty, 1759-1791, p. 831.
2. Ontario Archives, 1905, p. lxx; see also p. xc.
3. Documents, Const. Hist. of Canada, Doughty & McArthur, 1791-1818, p. 42.

clause in regard to oaths as contained in the Instructions of 1783 (1).

On November 11, 1791, Colonel John Graves Simcoe issued a Proclamation in regard to Lower Canada, of which the fourth clause contained -Every petitioner shall ----besides taking the usual oaths, subscribe to the Declaration above recited.(2)

On the basis of this Proclamation a form was drawn up for the petitions for land as follows:- (3)

To his Excellency John Graves Simcoe, Esquire, Lieutenant-Governor and Commander in Chief of the Province of Upper Canada, etc. etc .

The Petition of ----respectfully shows,

That your petitioner is desirous to settle on the lands of the Crown in this Province, being in a condition to cultivate and improve the same.. That he is ready to take the usual oaths, and to subscribe the declaration, that he professes the Christian Religion, and obedience to the laws, and has lived inoffensively in the country which he has left. Prays your Excellency, would be pleased to grant him -----acres of land upon the terms and conditions expressed in your Excellency's proclamation bearing date the 7th day of February, 1792, or such other quantity of land as to your Excellency in your wisdom may think meet. And your petitioner as in duty bound will ever pray.

Township of -------Lot Number -----Concession.

Commencing at a Post in front of -----Concession, marked -----

Then North ---- Chains 27 Links; Then West, 9 Chains---Links, then South ----Chains, 27 Links; Then East, 9 Chains---Links; to the place of beginning; Containing ----Acres, more or less, for which acres----sevenths are reserved as per margin.

1. Supra, pp. 192 & 193.
2. Ontario Archives,1905, p. cv.
3. Ibid, pp. cvi & cvii.

Lot No. Concession.

With Certificate number Acting Surveyor General

The bearer, Years of age, born in

professing the Christian Religion and by Trade a

having been this day examined and taken the oaths, and by the oaths prescribed by law is recommended for a location of two hundred acres of land within this district, provided it does not appear from the surveyor's books that he has had any prior grant of lands in any district of this province.

Given under my hand
To the deputy surveyor of The district of.

The Act of 1792, 32 George III, Chapter 1, Section 3 (Upper Canada enacted that in all matters of property and civil rights resort shall be had to the Laws of England ---- (1). These Laws of England included the various oaths, some of which were objectionable to the Jew, but as regards to the holding of land, the oath of abjuration was modified in favor of a Jew since 1723, (10 George I, Chapter 4).. Yet reliance was placed on two old statutes to prohibit the Jews from holding land there. The one in 1271 (55 Henry III) allowed them only the houses then in their possession and in which they were actually living, and the other the Statute de Judaismo allowed them to buy "Houses and Curtilages in the Cities and Boroughs where they abide", etc. (2)

Whether Jews could hold land, however, was questionable and was frequently debated as late as 1830. (3).

1. Documents, Const. Hist. of Canada, 1791-1818, p. 83.
2. Henriques, The Jews & English Law, p. 192.
3. Tomlin's, Law Dictionary, Ed.1836, p.5; "Jews" referring to Blount's History of the Jew; and a pamphlet by Goldsmith.

Although Henriques concludes that (1) these statutes were not applicable after the return of the Jews and that Jews could hold land.

County landboards were established by Governor Simcoe and were abolished on the 6th of November, 1794, who were to refer the Petitions to the Lieutenant-Governor in Council. By order of the Executive Council, November 6th, 1794, applications were to be made through the Clerk of the Council. According to the practice all land petitions of an unusual character were to be made to the person administering the Government, through the Clerk of the Council, while in the ordinary cases a magistrate in any town as appointed by the Lieutenant-of the County was authorized to give proper persons recommendation. (2).

According to the order of the Executive Council on November 6th, 1794, (3), it appears that only those would be admitted "whose loyalty, integrity, morals, shall appear to entitle them to the benefit of his Majesty's Bounty and render them useful inhabitants of this Province. It is hereby resolved that all persons professing the Christian religion and being capable of manual labour who can adduce a satisfactory voucher of their having paid obedience to the laws, and led a life of inoffensive manners in the country, where they last resided shall in future be considered, as qualified to be admitted to the possession of lands within this province, after having taken and subscribed the Oath of Allegiance and settlement prescribed by the Act of Parliament. ( ).

"Therefore, any magistrate living and residing in the county wherein any person of such a description may wish to become a resident, is duly authorized to give him a

1. Henriques, p. 192.
2. See, Patterson, supra, p. 51.
3. Ontario Archives Re.,1905,pp. CVIII & CIX; also Ontario Arch. Rep.,1829,p. 95; note Patterson,p.113--Council recommends to Simcoe in 1795 strict enforcement of requirements respecting oaths by aliens before receiving grants.

recommendation to the deputy surveyor on the county or district for a location of lands in the following words. "The bearer A.B. of ----years of age, born in ------- professing the Christian Religion, and by trade a ----- having been this day examined by me, and taken the oaths prescribed by law, is recommended for a location of two hundred acres of land within this county, provided it does not appear from the Surveyor's books that he has had any prior grant of lands in any district of this Province."

It might be noted here that these regulations were it seemed only in regard to the usual petitions, the unusual ones going direct to the Executive of the Province, at any rate those not clearly coming within the terms of the above order.

In September of 1796, Simcoe returned to England and in his absence, the Hon. Peter Russell administered the Government until 1799, when Lieutenant General Hunter took charge up to 1805, but as he was absent much of the time, his council, especially Elmsley, Russell, Shaw and McGill ruled. . It has been stated that Mr. Russell was a cautious man and that his policy was safe rather than vigorous. (1).

The usual practice in regard to these petitions of land grants was to bring the matter up before the Executive Council who discussed the matter and registered their decision on the back of the petition with any remarks that the situation required.

Up to 1796 then I have outlined the Law of England, the instructions and regulations in force in Upper Canada in regard to land. It can be seen that the oath of abjuration in force in regard to lands here was

1. Patterson, supra, p. 10.

not applicable to the Jews, and the other oaths the Jews could take. Even if the usual oaths were in force, they could not have prevented a Jew naturalized under the Act of 1740 from receiving a Crown grant by the terms of the Act and by direct recognition, (and having all the rights of a British subject,) in the correspondence with the Home office set out above.(1) The oaths in that case would be altered so as to allow a Jew to take them.

If this was true as to a naturalized Jew, it was all the more so for a natural born one as the correspondence (2) directly implies and for reasons set out in a previous chapter. The oaths, we have seen also would be repugnant to the condition and state of the Province in regards to a Jew in view of the general policy in regard to the colonies. (3).

But there is some doubt whether in England the Jew was forbidden to hold or purchase land, though they actually held it. The law of England, in view of the above could not have affected the right of Jews here.

Yet such interpretations of law or policy did not seem to bother or concern those bodies who were administering the laws, who based their practice no doubt upon the regulations we have quoted above. This is brought to light in a series of documents, photostat copies of the originals which are in the appendix and which we shall discuss now. These documents are the first evidence of any disability in regard to Jews in Canada, it usually being thought by previous writers that the political struggle of 1808 was the first example of discrimination against Jews. (4).

These documents are a eries of petitions of

1. Supra, p. 158,foll. ½.
2. " p. 160.
3. " p. 163-164.
4. None of the writers on Canadian Jewish History refer to any discrimination previous to the Hart episode.

lands by the first applicants of Upper Canada. The first petition of land on record was by Moses David (1) to Hon. Peter Russell, on the 31st of July, 1797. He recites that he is a natural born subject of His Majesty, who had resided in this Province for one year and that he has served in the Militia in Upper and Lower Canada, and has never obtained any grant of land from His Majesty and he considers that he is entitled to same. This petition was evidently not answered, but we shall discuss Moses David shortly.

The next petition to His Honour, Peter Russell was by Levy Solomons, dated at Cornwall, on the 23rd day of October, 1797, (2) who petitions that he wishes to become a settler in this Province, and not having received any lands as yet, asks for such quantity as he may be entitled to receive, etc. Attached to this petition was the certificate of the Justice of the Peace at Cornwall, dated the 30th of October, 1797, certifying that Levy Solomons personally appeared before him and took the Oath of Allegiance, and signed the declaration as prescribed by law, and has been a resident of this place for two years. On the back of this petition as was the usual practice, the endorsement under the signature of what appears to be that of Chief Justice Elmsley is the following:-

"Jews cannot hold land in this Province" having read at first these parts. It is difficult to explain the reason behind this decision other then that expressed above, namely that the regulations and instructions seem to state that only a Christian could hold land

1. See, Appendix, p.331 for original. The endorsement which by inadvertence was not in the photostat copy, read "Moses David, Rec'd 31st July 1797, Pet'r belongs to the Lower Province." That this was not so will appear later. See note at end of chapter concerning Moses David. Can. Archives--Land Petitions, Upper Canada, 1803"D", attached to petition of March 1803, ante.
2. Appendix, p.333; Can. Archives, Land Petitions, Upper Canada, "S"; Minutes of Council, Land, Upper Canada; see, Ontario Archives Reports, 1931, p. 109.

and this was thoughtlessly considered the law. It is doubtful whether racial or religious discrimination entered the minds of the Council. Whether Levy Solomons was an alien, a British subject or naturalized is not clear, but the endorsement only refers to the fact that he is a Jew and this was the ground on which it was decided. This is confirmed later as we shall see. In all probability, he was a British subject as most Jews of the time were. Even if an alien, he would probably have received the land after taking the Oath of Allegiance and the declaration, as they were not always strict, which only shows that his religion is what they excluded him for.

Very shortly after the petition of Levy Solomons, the same Levy Solomons petitioned on behalf of Moses Hart, of the Province of Lower Canada, Merchant, for land, stating that Moses Hart had purchased several rights to military land from discharged soldiers and non-commissioned officers, and that the said soldiers had not drawn any lands, except such as is expressed in their respective certificates which were recited as annexed (but which I have not been able to find) and that the said Moses Hart was desirous of obtaining those lands in the Province of Upper Canada. According to the endorsement on the back, this petition was not recommended.(1) Whether or not the same policy was enforced here is not stated, but a petition following so closely upon that of Levy Solomons, in fact one which came up at the very same time for decision, would most likely have been rejected for similar reasons. It might have been as a result of the polic to avoid speculation which was

1. Appendix, p. 332; Canadian Archives, Land Petitions, Upper Canada, "H"; see, Ontario Archives Reports, 1931, p.109, for minutes of Council meetings thereon.

always the intention to avoid. Yet, it would seem from the end of the petition that he desired to 'locate therein'. Moses Hart, however, was not evidently a resident here, but one of Lower Canada, and this likewise might be a ground of refusal.

The next petition is that of the aforementioned Moses David of Sandwich in the Western District, a merchant, to Peter Russell, the Lieutenant-General of the Province of Upper Canada. (1). This petition says that the petitioner is a natural born subject of his Brittanic Majesty and desired land. It would seem according to this petition that discrimination was practiced against Mr. David, as several individuals, he stated had received lands in this place since David's application. (2). There was no answer to this petition as well.

About this time, or a little later, a Petition was received from the Grand Jury of the Western District asserting that a great many of the town lands in Sandwich granted in July of 1797, still remained unimproved, although the time stipulated for making the improvements was past . As a result, the progress of the town had been greatly impeded and real settlers in both town and country injured. It was further charged that many owners of state lands had received deeds contrary to the regulations. (3). Although there were some seven or eight houses in the whole town, outside persons who wished to build could not obtain a grant and were forced to buy lots.

1. See, Appendix, p. 334, dated 8 Jan., 1803. Can. Archives Land Petitions, U.C."D", 1803; attached to petition of 5 March 1803, ante.
2. Ibid, p. 334 last paragraph.
3. Patterson, supra, p. 61; For regulations of 1797 see ante, p. 203 which we have quoted.

It was suggested that all vacant or unimproved lots in town be fulfilled and be regranted under strict penalties for non-improvement.

As was usual in such cases, the surveyor-General was ordered to report upon the matter, action being delayed until the report was received. The final result was a stricter enforcement of the rules. In August of that year (1805) a proclamation was issued by Hunter (1) ordering all persons who claimed possession of land granted, but had not yet taken the Oath of Allegiance and the others thus required by the regulation were to do so within twelve months from date on pain of the legal penalties involved. It would seem that from this document that there would be a tightening up in the regulations concerning land which might have caused them to scrutinize an application for land by a Jew in a somewhat closer manner. It would seem further from this petition that Mr. David had purchased land under the regulations of 1797 (2) and no question evidently arose as to his right to own the land and erect a dwelling on it in spite of the wording of the endorsement in Levy Solomon's petition. ( ). But this does not prove that they recognized the right in law and distinguished between a purchase and a Crown grant.

It is interesting to note that it was the practice at that time to receive a certificate from the church wardens which was evidently required in accordance with the instructions, the church warden being equivalent to the town warden.(3) No attention, we mentioned, was evidently paid to this petition because Moses David petitioned again on the 9th of March, 1803 as follows: According to this petition, Moses

1. Ontario Archives Report, 1906.
2. See, Petition, Appendix.
3. See, Appendix, p. 337; attached to original petition in Canadian Archives of Moses David, March 1803 ante.

David had prior to the evacuation of Detroit in 1796 lived there and was among the first builders of the Town of Sandwich, he was a native of Quebec and showed his zeal for His Majesty's service as a true and loyal subject. He expected the land would be granted to him in accordance with Mr. Russell's letter to the magistrates of the Western District (1) which petition he recites "he understands has been rejected under the idea that his Religion precludes him from any grant of land in his Majesty's Colonies". (2).

The letter to the magistrates referred to is as follows:

Directions respecting Reserves and surveys in the Town of Sandwich.

A reserve to be laid off equal to the quantity of land taken into the presente town of Sandwich and whatever land may remain afterward behind the Town to be divided into lots of 24 acres each, which are to be given as Park lots to those settlers who build the first Houses in the Town which they will be confirmed in upon their producing a Certificate at the Surveyor General's Office from the Town Wardens of their having actually built a good dwelling House there and residing in it either in their own Person or by a good and sufficient Tenant. The description may be sent to the Attorney General of the land granted to Mr. Allison that Deeds may issue thereon - 19th August 1797.

Peter Russell.

To the Honourable D. W. Smith, Esq.,

Endorsed His Honour 19th August 1897 (3).

This Petition clearly shows the fact of his being a Jew was responsible for the rejection of his petitions,

1. See Below.
2. Petition, Appendix, p. 335; Canadian Archives, Upper Canada, Land Petitions "D"1803; Can. Archives, Minutes of Council Land Book "E" Upper Canada from 1802-1804.
3. Russell Papers, 1796-1797 Ontario Historical Society Publication, p. 253.

although David was a British Subject, but here the petition suggests that a Crown Grant was forbidden generally in the colonies which ~~an~~ grant would be a higher right than a mere purchase.

In a certificate attached to the petition there is a certificate that he offered to go with a certain F. McKee and serve as a volunteer in Fort Miami in the year 1794 with the American Army and General Wayne, before that place. (1)

This petition was referred by the Lieutenant-Governor's office on the 9th of May, 1803, to the Executive Council for report by order of the Lieutenant-Governor, and on the 10th of May, 1803, under the signature of H. Alcott, Chairman, and approved by Hunter, Lieutenant-Governor, the petition was recommended in the following terms: "recommend that the petition be complied with upon the petitioner producing a certificate from the church warden of Sandwich that he has erected a house and premises on his town lot." (2).

The transaction was then completed as appears by the Receiver General, receipt of the officers' full fees, the number of acres amounting to 27 (3). It would seem from this document that what might have prompted the Committee to finally grant him land was that he was a loyal soldier because he came under the regulations of a military man. also the special regulations and promises as to the Town of Sandwich.

In summarizing than the above incidents brought to light by these documents, we can say - that at first a Jew was considered not to be able to hold land here or receive a grant from the Crown. This policy might

1. Attached to last petition of Moses David, 1803.
2. See, Appendix, p. 334.
3. " " ,pp. 338-339. We have searched both the Minutes ~~State~~ of Council-State (Land) Upper Canada (Can. Archives) and Minutes of Council (Land, Upper Canada, Can. Archives) but have not found any discussion in regard to rights of Jews except as endorsed on the petitions.

have changed and this restriction might have become limited to grants from the Crown in Colonies generally, and only in special cases where loyalty was proved or where special circumstances warranted it, were these rules relaxed. Or it is still open to say on the strength of these documents that the case of Moses David was exceptional and the general right to hold land and receive Crown grants was disputed.

This would be reading the two documents together, although the point at issue was a Crown grant for all cases, and in the one case a purchase was tolerated.

In spite of these rulings and conceptions by the Authorities, the law in itself was clear that a Jew here could receive a Crown Grant and all the more so if he purchased the land under the English Law considered to be in force here.

Although other references have been made to applications for land in Upper Canada, it is doubtful whether the names mentioned by Mr. Sack in his article in the "Jew in Canada" (1) were really Jews, and I understand that they were not. (2). This is the last that was heard of any trouble in regard to holding land and so far as I have been able to ascertain there has been no other incident when this right was questioned, but we do not find at any rate Jews in any numbers until after 1850, although the first Jew came in about ~~1844.~~ 1853 to Toronto. (3).

1. Page 25.
2. In the opinion of the research worker of the Ontario Archives, many of the names given are not Jewish. There are other errors as well. For example, Dr. Solomon should have been Dr. Solomon Jones.
3. See, Sack, Jew in Canada, p. 41.

A recent case of interest in regard to land in Ontario is that of Essex Real Estate Co. Limited against Holmes (1) in which Garrow, J. held (2) that a restrictive covenant placed on land,,that land shall not be sold to or occupied by persons not of the Caucasian race nor to Europeans, except such as are of English speaking countries and the people of French descent was valid. It was held here that European meant in a geographical not ethological sense - and that what was intended was that the purchaser must be by colour white, and if a native of Europe, either of the English or French speaking people(and if these above conditions were not there, such a person could be excluded). In this case the person in question was a Syrian (a country of Asia) and admittedly of Caucasian race.

This case would seem to hold that restrictions against generally a race might be valid. Whether a covenant restricting land so as to prevent persons of the Jewish religion from purchasing or holding same (except for Church purposes) would be valid in view of our fundamental law is a doubtful point although our opinion is that such a restriction would not be upheld .

1. 27 Ontario Weekly Notes, p. 392.
2. This case was affirmed on appeal 28 Ont,p. 69. According to one writer Moses David was a member of a prominent Jewish family of Montreal who located in Sandwich as a merchant as early as the autumn of 1800. He resided there until the summer of 1814 when a letter preserved among the Burton Historical Society indicated he was seeking permission from a Colonel Croghan to leave the place. Prior to 1803 he had been an ensign in Askin's battalion of the Essex Country. In this year he and Charles Askin were slated for lieutenancies when the next vacancies should occur. (see, John Askin Papers,1766-1820, Burton Historical Society Records,editors note (Quaiffe) vol. II, p. 645; see, Appendix, ante,p. 352. We know from the petitions & above documents however that David as soon after 1796 as he could left Detroit,& was one of the first builders of Sandwich,having lived in Upper Canada at least since 1796. Previously to 1796 he lived in Detroit . He sat on the Jury in 1794 at Detroit. Detroit legally belonged to the U.S.after 1783 but was not given up by the British until 1796. Until then it was administered as party of Upper Canada (Riddell,Introduction to Records of Early Courts of Justice of Upper Canada, pp. 4 & 22). Sandwich,being very near Detroit,became an important settlement,being the military & judicial centre after 1796 when the exodus from Detroit really started,two it commenced after 1783. The first builders probably came (over)

XII

RIGHTS OF JEWS IN SCHOOLS, COLLEGES, &C.

The foundations of the present University of Toronto were laid in the very beginning of the separate existence of Upper Canada, but a University was not formally decided on until 1827 when a Charter was granted to King's College. This Charter gave the Church of England, a minority in the Province, complete control over the Institution. All members of the Council had to be members of the Church of England and subscribe to the 39 Articles of Faith. This was also required of the Professors. The Right Reverend John Strachan was the dominating spirit in the University movement from 1821 to 1848, especially as president of King's College.

A very liberal feature of the Charter, however, was that except in divinity, no tests whatever were to be imposed on undergraduates or graduates, a feature unknown in any other Charters of royal foundations in England and or in the Colonies. This has remained until the present time.

Controversy raged among the denominations over the policy and control of King's College, and as a result it was not formally opened until 1842, and not until a Committee of the House of Assembly had made a report in 1828 and recommended that no religious test should be required in case of President, professors and other officers except divinity. This resulted in an amendment to the Charter in 1837, that neither a member of Council or professor was required to be of the Church of England or to subscribe to any articles of religion other than a declaration of belief in the divine inspiration of the Old Testament

and New Testament, and in the doctrine of Trinity. (1)

The Anglicans continued to control the University and denominational feeling ran high until in 1850 complete secularization of the University, under government control was proposed by Baldwin. This law, with other features was passed on the 1st of January, 1850 (12 Victoria, Chapter 82).

Section 29 reads:

"No religious test or qualification whatsoever shall be required of ~~xx~~ or appointed for any person admitted or matriculated as a member of such University, whether as a scholar, student, Fellow or otherwise, or for any person admitted to any degree in any arts Faculty in said University, or for any person appointed to any office, Professorship and Lectureship, mastership, tutorship or other place of employment whatsoever in same, nor shall religious observances, according to the forms of any religious denomination be imposed upon the members or officers of the said university or any of them.

This was amended to provide for regulations for attendance at religious worship conducted by the respective Ministers, and was requisite for degree and admission. (2)

After a struggle - provision was made for denominational teaching in affiliated colleges. (3). These principles were embodied in the various Universities Act up to the present. The section of the present act, Revised Statutes of Ontario, 1927 reads:

"No religious test shall be required of any professor, lecturer, teacher, officer, servant of the

1. Wallace, History of the University of Toronto, note particularly, pp. 15 & 33.
2. 13 & 14 Victoria, chap. 49 assented 10 August 1850.
3. See, Wallace, supra.

University, or of University College, or of any student thereof or therein, nor shall religious observances according to the forms of any religious denomination or sect be imposed on them or any of them, but the Board may make regulations touching the moral conduct of the students thereof and therein, and their attendance on public worship in their respective churches or other places of religious worship and their religious custom by their respective ministers, according to their respective forms of religious faith, and every requisite facility shall be afforded for such purposes, but attendance in such forms of religious observance shall not be compulsory on any student attending the University or University College.

Nothing in this section shall interfere with the right of a federated university or college to make such provision in regard to religious instruction and religious worship for its own students as it may deem proper and to require the same to be observed as part of its own discipline. (1).

We might say then from the first Jewish students could attend the University and could be Professor, officer, etc. from 1850.

Jewish students evidently went to the University from its beginning. (2).

At the present time there are only two lecturers at the University and no Professors. Previously, there were a few lecturers, but there have been a considerable number of fellows, demonstrators, assistants, etc. from time to time, and there still are.

1. R.S.O.,1927, chap. 337.
2. See, Seck,Jew in Canada,p.41. We might note that King's College did not commence holding classes till 1842; therefore, Joseph could not have attended as early as 1838.

It is not the policy to ask the religious faith of applicants for these positions (1) which is done only in the case of undergraduates seeking admission to the University.

On July 1st, 1867, the University became a Provincial University and received, and still does, Provincial financial support, and several colleges later became affiliated with it.

At the present time, many Jewish students attend the University, as appears from the following statistics. (2).

University of Toronto.

Registration according to Directory.

	1930-1931	1931-1932	Hebrews 1931-1932
Arts	3,738	3,682	265
University of Toronto	559	600	61
University College	1,593	1,516	211 (13.3%
Victoria College	941	954	3
Trinity College	307	315	-
St. Michael's College	338	297	-
Medicine	820	845	148 (17.5
Applied Science	848	877	31
Household Science	229	180	4
Education	378	494	10
Forestry	63	70	1
Music	41	35	1
Graduate Studies	465	540	xno return
Dentistry	244	226	25 (11%
Social Science	114	139	11
Public Health Nursing	249	243	1
Occupational Therapy	36	33	5
Graduate Nurses	15	19	-
Physiotherapy	19	20	5
Duplicates	70	75	
	7,189	7,328	507 #7.5%)

x The Council of the School does not require students to state religious denomination.

Excluding the School of Graduate studies.

Note: (supplied by University Registrar).

Queens University has now a large Jewish registration. Both Queens and Western University are supported by the Province.

1. Interview with Registrar, Sept., 1933.
2. Supplied by the Registrar, Mr. A.B. Fennell. See, also, Study of Recreational & Cultural Resources of Jewish Community of Toronto, Feb., 1930, Jewish Welfare Board for statistics for previous years and other statistics.

PUBLIC AND GRAMMAR SCHOOLS

The oldest residential school for boys, West of Montreal, was the Royal Grammar School founded by Sir John Colborne in 1829, and Jewish students attended as early as 1836. Gershon Joseph was in the class of 36-38, son of Henry Joseph, Montreal; George J. Joseph '53, son of Judah George; R. T. Joseph '69, son of H. A. Joseph, and up to the present day the same clause as to religious tests are found as in regard to the University. (1)

Through the Province there were Private Schools, but in the main, during the early years of Upper Canada there were District grammar schools. In 1816 an attempt was made to provide for the maintenance of Common schools. From time to time a general system of Education was proposed out of public funds, but not until 1841 was an Act passed providing for Public Schools, as part of the municipal system. In 1844 the Public School system was introduced in Toronto. In 1847 there was one Board of Trustees for the whole City. (2)

In Ontario there are two classes of free primary schools, namely public schools and separate schools, the latter being denominational schools, established by an Act of 1863 (3). The public schools were formerly called common schools.

By the Common School Act of 1850 (4) all residents between the ages of five and twenty-one were permitted to attend school, except those who had separate schools.

By the same Act, school visitors included all Clergymen recognized by law of whatever denomination.

1. Roll of Pupils, Upper Canada College, Jan. 1830 to 1916, p.8; re test from 12 Victoria, chap.82 (1850), sec. 69.
2. Schools & Colleges of Ontrario by J. George Hodgins, vol.I, p. 2, foll.
3. See, Trustees Roman Catholic Separate Schools of Ottawa vs. Mackell 1917 A.C., p. 62 (Privy Council).
4. 13 & 14 Victoria, 1850, sec. 12 (13).

It was also provided that no pupil shall be required to read or study in or from any religious book, or to join in any exercise of devotion or religion and objected to by his parent or guardian. Subject to the regulations, pupils were to be allowed to receive such religious instruction as their parents or guardians desired.

The principles and terms of this legislation was embodied in the Consolidated Statutes of Upper Canada of 1859 (1) and is found in the Revised Statutes of Ontario, 1927 (2).

In regard to school attendance, no penalty was imposed in respect to the absence of a child from school on a day regarded as a holiday by the Church or religious denomination to which such child belonged. This law dates from 1896 by the Act of 54 Victoria, Chapter 55, Section 19, and is embodied in the same terms as in the present School Attendance Act. (Revised Statutes of Ontario, 1927, Chapter 332, Section 19 (2).

Regulations were from time to time made under these School Acts in regard to religious instruction. The earliest regulations I have been able to secure were those of the 16th of December, 1884, approved by the Lieutenant-Governor in Council. According to them, every public and High school was to be opened with the Lord's prayer and closed with the reading of Scriptures and Lord's prayer. The portions to be read were to be those selected by the Department of Education without comment or explanation by the teacher. No pupil was required to take part if notice in writing to the Master of the School was given. Clergy of any denomination were allowed to give religious instruction to pupils of his own church in the schoolhouse at least once a week after school hours. Provision was made for the Trustees, if they desired, to lessen the six hour

1. Chap. 64, sec. 129.
2. R.S.O.,1927. Public Schools Act, chap. 323, sec. 7 (1).

school day in order to close earlier on the day of religious instruction (1).

The scripture readings were those in Ross' Scripture Readings, (1885) authorized by the Department, and portions of the Old and New Testament, including the Crucifixion story was contained therein. Those provisions, more or less, continued under the various school Acts. (2), but no course of religious instruction was prescribed.

The present regulations in both High and Public Schools provide for religious instructions. Those of the High schools are similar in wording to those of the Public Schools. The High school Regulations are as follows: (3).

8. (1) (a) Every High School shall be opened with the reading of the Scriptures and the repeating of the Lord's Prayer, and shall be closed with the Lord's Prayer or the prayers authorized by the Department of Education; but no pupil shall be required to take part in any religious exercises objected to by his parent or guardian.

(b) (i) In schools without suitable waiting-rooms, or other similar accommodation, if the parent or guardian demands the withdrawal of a pupil while the religious exercises are being held, such demand shall be complied with, and the reading of the Scriptures shall be deferred in inclement weather until the closing.

(ii) To secure the observance of this Regulation, the teacher, before commencing a religious exercise, shall allow the necessary interval to elapse, during which the children or wards of those, if any, who have signified their objection may retire.

1. See, Regulations in Ross-Scripture Readings Public & High Schools, authorized by the Department.
2. For those of 1891 see School Law of Ontario, McMurrich & Roberts (1894), p. 411 on the School Acts of 1891.
3. Ontario Dept. of Education Courses of Study & Examinations in High Schools,1932, p. 10; also, General Regulations of Public & Separate Schools,1932, Dept. of Education,p.14.

(c) If the parent or guardian objects to his child or ward taking part in the religious exercises, but directs that he shall remain in the school room during such exercises, the teacher shall permit him to do so, provided that he maintains decorous behaviour during the exercises.

(d) If, in virtue of his right to be absent from the religious exercises, any pupil does not enter the school room till the close of the time allowed for religious exercises, such absence shall not be treated as an offence against the rules of the school.

(e) When a teacher claims to have conscientious scruples in regard to opening or closing school as herein prescribed, he shall notify the Board to that effect in writing; and it shall then be the duty of the Board to make such provision as it may deem expedient for the carrying out of the requirements of (1) (a) above.

(2) (a) The Scriptures shall be read daily and systematically; the parts to be read may be taken from the book of selections adopted by the Department for that purpose, or from the Bible, or from the list of the Selected Scripture Readings of the International Bible Reading Association, as the Board by resolution may direct.

(b) A Board may also order the reading of such parts by both pupils and teachers at the closing of the school, the repeating of the Ten Commandments at least once a week, and the memorization of passages selected by the Principal from the Bible.

(c) If the Board does not pass the resolution provided for in (a) above, the Principal shall make the selection himself, and shall promptly notify the

Board of his action. Such action may be revised by the Board at any time thereafter.

(3) (a) A clergyman of any denomination shall have the right, and it shall be lawful for the Board to allow him to give religious instruction to the pupils of his own church, in each school house, at least once a week, after the hours of closing the school in the afternoon.

(b) Under the same conditions, a clergyman, selected by the clergymen of any number of denominations, shall also have the right to give religious instruction to the pupils belonging to such denominations.

(c) If the clergymen of more than one denomination apply to give religious instruction in the same school house, where the number of class-rooms is insufficient for all at the same time, the Board shall decide on what day of the week a room shall be at the disposal of the clergyman of each denomination, at the time above stated.

(4) Emblems of a denominational character shall not be exhibited in a High School during regular school hours.

Under section (2) (a) lessons or excerpts of the Old and New Testament are provided on sheets in regular order for different lessons by the International Sunday School Association.

The book of Selections (1) was adopted by the Department a few years ago (about 1931) causing much discussion in the newspapers. It was issued for the approval of the various school Boards and was not authorized for use by order in Council as other text books usually

1. Published by MacMillan in three volumes about 1931.

are. But, in effect, they could be used, when the School Board gave permission, by the Teachers at their discretion, unless determined otherwise by the Board. There are many passages from the New Testament, as well as from the Old which would be objectionable to the Jewish child. The teacher thus has it in her power to abuse her privileges and make it uncomfortable for the Jewish children who usually sit through these exercises, though they are not forced to.

In regard to Industrial schools for children who misbehave, the "Judge or Inspectors shall endeavour to ascertain the religious persuasion to which the child belonged and shall, as far as practicable, send a Roman Catholic child to a Roman Catholic Industrial School and a child of any other religious persuasion to a school established by and with the sanction of a board of public School Trustees. (1).

Section 22 reads - A clergyman of the religious persuasion to which a child appears to belong may visit the child at the school for the purpose of instructing him in religion on such days and at such times as may be fixed by regulations of the Minister ".

Jewish boys go to these Industrial schools and the directors of the schools generally do what they can to see that their special religious observances are carried out as far as possible. They always accept a teacher sent by the Federation of Jewish Philanthropies for a certain period of time each week (2).

At the present time, there are in the City of Toronto two Jewish High School teachers, thirteen at the Public schools, and three in vocational schools, in

1. R.S.O.,1927, chap. 329, sec. 14 & 22.
2. Letter from Cohn to writer,1933. Mr. Cohn was formerly director of the Boys' Club (Jewish).

all eighteen Jewish teachers. There was a total in 1932 of 2,195 teachers in the public schools of Toronto. In 1929 there were about 8000/Jewish pupils in the public schools of Toronto, or 11% of the general attendance , and in the Collegiates, 14% of the pupils were Jews. (1). In the public schools in 1932 the percentage of Jewish teachers was .00573%, while the number of Jewish pupils, taking the 1929 figures, which would be less than in 1932, would be 11%, and the population of Jews being approximately 7%. There are some Jewish teachers scattered about in the cities and towns of Ontario. Many applications from Jewish teachers are on file but the practice of allowing the Principal of each school with the concurrence of the Superintendent of Schools to decide on the members of their staff, indirectly results in discrimination(2) otherwise there is no legal disability for Jews provided they are British subjects or naturalized.

1. Interview with Mrs. Siegel,at present a Jewish member of Board of Education of Toronto. For attendance figures see, Statistics of the Board of Education,1932,pp. 170-171; also, p. 285. There are also Statistics in regard to religious exercises but there are none by religion.
2. Mrs. Siegel (Interview,September,1933).

XIII

INSURANCE DISCRIMINATION and LEGISLATION---JEWISH VOTERS, SUNDAY LAWS, etc.

While there has always been some discrimination against issuing insurance policies, especially fire, to Jewish applicants, it was only when a system of compulsory insurance for automobile offenders was enacted, that the matter of discrimination came to the fore.

In 1929 a Jew by the name of Greenberg had made an application for insurance of his automobile, but did not reveal that he was a Hebrew in answer to the question on the application "What is your racial extraction?" He answered "Canadian" and also shortened his name to Green. The Company, as a result did not make the usual investigation in cases of persons of Hebrew extraction, who are considered an unusual hazard, and they claimed this information was material and important to themselves as it is with many substantial companies, and refused to pay the claim as a result of an accident. The matter went to Court. (L). While the Judge held each case was to be decided on its own circumstances, and not holding that the defendant's concealment of his extraction, or his passing under a name not his own necessarily invalidates the policy; but here under the circumstances it was material that he should have made full and correct disclosure in his answers (2).

As a result of difficulty in securing automobile insurance, various conferences were held with the Premier and the Insurance Companies, 80% of the latter agreeing not to discriminate against Jews obtaining automobile insurance and this on the threat of Mr. Singer bringing in a Bill to the House to that effect. (3)

1. London Guarantee & Accident Co. vs. Green, 38 Own., p.398. Appeal dismissed 39 Own., 1930.
2. Judgment of Kelly J. trial judge following Horne vs. Poland (1922) 2 K.B.364, a case decided in the English courts.
3. Statement of Singer, see, Appendix, p.344.

In 1932, the difficulty of Jews obtaining insurance generally, led to the drafting with the consent and co-operation of the Premier, of a Bill against discrimination. Many agent's forms had the question - "Is the assured of Greek, Jewish, Assyrian or American extraction?" "If so, risk is declined."

The draft Bill (1) had a clause placing the onus of proof on the Companies in any case in which they were charged with discrimination. This was to get at the record and facts, otherwise inaccessible. The Premier took the matter up with his Cabinet and they unanimously agreed to have the Bill presented to the House. The first Reading took place on March 15, 1932 on the second Reading, the Premier and others spoke and the Bill received a second reading.

The Bill then went to the Legal Bills Committee, where the onus clause was struck out, with the intention of replacing this clause later if the Bill couldn't be marked out otherwise.

The third reading was on the 24th of March, 1932, and on March 29th, 1932 "The "Singer Bill" became law. (2).

This bill provides that any licenced insurance agent who discriminates unfairly between risks, because of race or religion of the applicant, shall be guilty of an offence under the Insurance Act with severe penalties (3).

Since the passing of this Bill, one case has come into the Courts under the Singer Bill. This is the case of Rex against Canadian General Insurance Company, now on appeal from the judgment of Judge Coatsworth in the Police Court. (4).

1. See, note 22 George V,chap.24,sec.4, Appendix,p.341: see Singer statement,Appendix,p. 344 in regard to the various bills and their history.
2. Appendix,p. 342; now 22 George V,chap.24,sec.4.
3. See, Bill supra--also Singer supra.
4. From files in office of E.F.Singer K.C.--Judgment,May 10, 1933.

Even after the Singer Bill many Jewish policies were cancelled by the accused, as a result of a certain "closet" fire by one Levine. On the same streets where Jewish policies were cancelled, gentile policy holders were not deprived of insurance, and in many policies of Jews, left in force, the "Jew clause" which only allowed 10% of the insurance for loss to clothing and personal effects, was inserted in the policy. Fires had been frequent among Jews in certain sections of the City and especially fires in clothes closets, and figures were presented to show that the Hebrew risks were much greater than those of gentiles. The agency was unsatisfactory according to the Insurance Company as well.

In short, the question revolved around what was unfair discrimination, the Crown contending that that meant the policies were cancelled because an individual was a bad risk, but the defense agreed that mere race and nationality was not sufficient to excuse unfair discrimination, yet the question of risk still remained with the Company which was responsible to its shareholders.

The Judge held (1) that the race or religion here was only incidental and not the real cause of cancellation.

In the words of the Judge:- "If from experience we find that business coming from, say a sect or race, is not profitable, but hazardous, and decide not to have any further dealings with that class, can it be said that this is unfair discrimination because of the race or creed within the terms of the Act? Is it not rather that on business grounds we find that the business is too hazardous and not profitable, and therefore it is refused? ---not because you are a sect or race, but

1. For evidence and judgment, etc. see files in Singer's office.

because your business is not safe the Company declines to deal with you or any in the same class.

"There is not on public policy any difference between religiouns, Jew, Gentile, Catholics or Protestant; all are equally within the same legal protection, and there is no such thing as persecution of any sect.

We are safe in laying down the broad principle that while no person may be unfairly discriminated against because of race or religion, that does not extend to class or classes whose business is not, on mercantile grounds acceptable -

In other words, to -----a class, say a race or creed, whose business is not profitable, cannot force a Company to accept their business <u>because they are in a class,</u> but must show that all being on a perfectly equal business condition, the discrimination is purely on the ground of being in a race or creed without reference to business at all.

The Judgment by Coatsworth concluded that the Defence risks were not unfairly cancelled or refused, but because they came within a certain class which proved to be unsatisfactory as to location or otherwise, or extra hazardous, and that the fact that the insured persons belonged to a certain race or religion was incidental only, and not the real cause for cancelling the risks or making them more onerous to the insured, also that the risks came through the Union Agencies and owing to a certain suspiciously regarded loss which occurred through such agency, cancelled all risks brought through the Agency.

This judgment seems to be against the letter and spirit of the Singer Bill, and it is doubtful if it

will be sustained on appeal. If it is, then the Singer Bill will avail little to remedy the situation as the decision of risk, physical and moral, will always be with the Company, and indirectly Jews would be discriminated against. Mr. Singer considers the situation improved 50% as a result of the Bill, but whether this is so is difficult to ascertain. Of course, individual Jews have always been able to obtain insurance. (1)

In regard to the question of Jews voting on Saturday, special provisions have been made since 1887 (2) which are now embodied in the present Municipal Act.(3) This act provides that where the ballot is taken on Saturday and the voter is of the Jewish persuasion and objects on religious grounds to vote in the prescribed manner--he may orally vote by making a declaration.

There have been no reported cases in regard to Sunday legislation concerning Jews as far as we have been able to ascertain. Unlike Quebec there has been legislation for many years allowing bakeshops employees to work on Sunday with the permission of the Inspector under what is now the Factory Shop & Office Building Act,R.S.O.,1927,chap.275,sec.71(4). The police have allowed Jewish bakers to deliver on Sunday provided they do so early in the morning.

1. Appendix, p. 344, foll. 4.
2. 60 Victoria,chap.14,Sec.83.
3. R.S.O.,1927, chap.233, sec.117.
4. See, 60 Victoria,chap.51,sec.40 (1897).

PART III

RELATION OF THE GOVERNMENT

TO THE JEWS OF

CANADA

XIV

RELATION OF THE GOVERNMENT OF ONTARIO TO THE JEWS

The Government of the Province of Ontario has, on the whole, been against racial discrimination, and has expressed themselves in this regard from time to time. As far as I have been able to find out, there is no record earlier than the incidents mentioned herein (1), except that there have been a few appointments of Justices of the Peace in Toronto, which are within the jurisdiction of the Provincial Authorities (2) and for some years Magistrate Cohen held office on the Police Court Bench, after being interpreter and Justice of the Peace for many years.

Before the last three or four years, scarcely any Jews held positions in the Civil Service or on the office staff until Mr. Singer was able to secure several within the last few years - about 35 (3). As political patronage for the most part is the determining factor, and there was no Jewish member until Mr. Singer was elected (4) there was no one to speak on their behalf. Furthermore, it is conceivable that the Jewish applicants were few because the Jewish people do not take to the slow opportunity of promotion in Public Service and the requirements as to payments of salary for superannuation.

Mr. Singer has, however, found the Premier and Heads of departments very fair and willing and anxious to employ Jews on their staffs. (5). The first Jewish Coroner was Sol. Singer and Louis J. Breslin acted in this capacity as well for a few years.

From time to time anti-semitism has come up before the House and has received the sympathetic attention of the Members and the Cabinet, not only on the

1. See, Singer, Statement,Appendix,p.344,foll. ✱.
2. See, Sack,Jew in Canada,p.546; also personal knowledge of writer.
3. Singer,supra,p. 344.
4. Ibid.
5. Ibid.

question of Insurance, but anti-Semitism generally. This is exemplified by the Martin Bill which was sponsored by the B'nai Brith, and was as a result of the placing of signs on public highways and other places, openly suggesting discrimination between race or religion and also because of the difficulty of Jews obtaining space in apartment houses and office buildings, still very great to this very day.

The Bill, which received its first reading on February 24th, 1933.

The object of the Bill was to stamp out any attempt by persons owning or operating places of public resort, etc. to advertise publicly that their premises or accommodations were not open to persons of certain religious beliefs, colour, etc. (1).

The Bill was cited as the Publication of Discriminating Matter Act, 1933, and provided that owners, lessees, agents, etc. of any place of public accommodation resort or amusement, or owners, etc. of apartment houses or office buildings, who directly or indirectly published, circulated, broadcasted any posters, letter, communication, advertisement, etc. of any kind intended to, or calculated to discriminate against any religious sect, creed, class, denomination, race or nationality, or against any of the members thereof, or providing or neglecting to provide any accommodation privilege, right, etc. offered to the general public, or stating such were unwelcome or not desirable, etc. was guilty of an offence and liable to a penalty of not less than $50.00 nor more than $500.

While resort, etc. were used generally, yet the Act specifically referred to (2) inns, hotels,

1. See, Appendix, p. 345.
2. Ibid.

health resorts, restaurants, public conveyance, bath houses, barber shop, theatre or dance hall, etc., but the mailing of a private communication in response to a specific written or verbal enquiry was not included within the Act.

The first reading of the Bill took place on February 24th, 1933, as we stated above.

This Bill was favorably received, but some Members, including Premier Henry, thought it was impossible to legislate people to become decent citizens though they agreed with the principle of the Bill. After the second reading on, it was sent to the Legal Bills Committee. On the request of the Chairman of the Committees, the Bill was withdrawn, although it would have passed the Committee had it been formally voted on, and instead a resolution was passed by the Committee, which was later passed unanimously by the House.

The resolution was as follows: (1)

"In connection with Bill #71, an Act respecting the Publication and Distribution of Discriminating matter, the attention of this Committee has been drawn to certain practices whereby persons operating or owning places of public or private resort, publicly advertise that their premises and accommodations are not open to persons of certain religious beliefs, colour, race, and/or nationality, whereas such practices are not in accordance with the best principles of British ideals and traditions, be it therefore resolved that this Committee record its disapproval and condemnation of all such practices. (2).

1. See, Votes & Proceedings paper #40 Legislative Assembly (Ontario) Tuesday, April 11, 1933, p. 326 (Unpublished).
2. See, Singer Statement.

The Appeal Court of Ontario has also attempted to prevent any racial cry being raised in Ontario by striking at the Klu Klux Klan which operated in Canada for several years from the early 20's on. The papers were full of comment in regard to the Klan and Rabbi Eisendrath raised his voice against the Klan from time to time (1) for its cry was against the Jew, as it was against the Catholics and coloured inhabitants.

When "Dr." W. W. Phillips, a chiropractor, and a group of masked Klan members, 50 or 75 of them, separated Isabel Jones, a white girl, from Ira Johnson a negro, by force or numbers and intimidation, several of the members were arraigned in the Police Court on February 28th, 1930, and Phillips was fined $50.00 or thirty days for wearing a mask, etc. at night under Section 464 of the Criminal Code without lawful excuse. This sentence was appealed on March 10th, 1930 by the Crown to the highest Court in Ontario and the judgment of Sir William Mulock, Chief Justice of Ontario, for the Court, consisting of some of the ablest members of the Bench - is of interest as revealing the attitude of our courts to such racial hatred (2).

The Chief Justice held the action of the Klan members was unlawful, an interference with the girl's rights, but also "a crime against the majesty of the law. 'Every person in Canada is entitled to the protection of the law. It is the supreme dominant authority controlling the conduct of everyone and no person, however exalted or high in power, is allowed to do with impunity what that lawless mob did --- It was an attempt to over-

1. See, Files of Toronto Day Star Library under "Jews".
2. Toronto Daily Star, Febr. 28/30 and April 16, 1930.

throw the law of the land and in its place to set up mob law, lynch law, to substitute lawlessness for law enforcement which obtains in civilized places" --- like a venomous serpent whenever its horrid head appears, must be killed". The fine imposed was "a wholly inadequate punishment, a travesty of justice, and imprisonment for three months was substituted with a warning that any repetition will meet with much severer punishment.

In view of the very recent attempts by those parading under Swastika colours (1) in Toronto - this Judgment, though not referred to - is an additional bulwark for the Jewish people against racial prejudice.

RELATION OF THE CITY OF TORONTO TO THE JEWS

The writer has been unable to find any documents in the early history of Toronto that reveal its attitude to Jews - except that the general impression among Jewish residents is that it has been very fair and favourable. It is difficult to trace these matters since a person's religion is not singled out in the records of the City - all religious groups being by law equal. It is generally known that practically no Jews are employed in the Civic service - whether because they do not apply for similar reasons to those mentioned in regard to the Province, or because such applicants would be indirectly discriminated against. However, there have been several Aldermen for many years of the

1. See, ante, p. 230, foll. 9.

Jewish Persuasion (1) and Mr. Joseph Singer was a Controller of distinction, and proposed for Mayor. At present there are two Jewish Aldermen, Nathan Phillips, K.C. and John J. Glass.

In other municipalities, there have been mayors, aldermen, etc. (2) and in the County and town of Whitby, Mr. Charles King held every office in the gift of these communities. He was offered the Liberal nomination for the Federal House several times but refused.(3)

In Toronto, Alderman Steiner was the first to be elected Alderman in Toronto, in 18 , and received distinctions and honours from time to time. (4).

The records of late, however, reveal the attitude of the City Government more clearly. -

During the war, a resolution was passed, recommending to the Dominion Parliament that aliens, who had come from alien enemy countries, and had been naturalized within twenty-five years, be deprived of exercising the franchise during the war, except those serving in and having children in war service. This resolution was presented on May the first by Alderman McGregor and was carried by a vote of seventeen to five, in spite of the eloquent speech of Alderman Louis M. Singer, a Jewish member of the Council. The Jews, of course, would have been greatly affected by such a law. No Bill was passed by the Government. (5)

From time to time signs appeared on City property, especially on the island parks, discriminating against Jews, but these were taken down by order of the Parks Commissioner.

In June, 1931, discussion in Council took place over a discriminatory sign placed on a building

1. See, Sack, Jew in Canada, p. 546.
2. Ibid.
3. From information by daughter, Mrs. Charles Dreimin, Toronto.
4. See, Birnbaum, Jews of Toronto, Can. Jew. Times, vol. 27, Jan. 10, 1913.
5. Toronto Star, May 1, 1917

on Lakeshore Road, leading into the City,(without the jurisdiction of the City. A motion was passed by Council and sent to the Municipality of Etobicoke, the District in which the sign appeared. The following record in the City Council minutes relates what took place in the City Council (1) and their disapproval of racial and religious prejudice.

"Alderman Phillips, seconded by Alderman Glass, moves whereas the attention of Council has been drawn to a sign painted on a building on the Lakeshore Road leading to the City of Toronto, which is offensive to Jewish citizens, particularly, be it therefore resolved, that Council records its disapproval and condemnation of all racial and religious prejudice, and that this Council requests the Council of the municipality in which this sign is situate to take steps to remove the same, and that the notice required by the 32nd Rule of this Council be dispensed with so far as relates to this motion, which was carried."

One June 16th, 1932, one of the city aldermen who operated a summer hotel in the Muskoka District advertised 'Patronage exclusively gentile' and members of the Council,though it was not within their jurisdiction, disapproved of his actions, especially as Siberry himself had moved in Council, a year before, a motion censuring a firm for similar advertising, which motion was passed unanimously. (2)

This Summer, much animosity arose in the "Eastern Beach District" of Toronto between Jews and Gentiles, the Gentiles claiming Jewish people and others

1. Minutes of City Council,June 30,1931.
2. Toronto Star, June 16,1932.

did not keep the beach clean and were guilty of objectionable practices in the vicinity of the Beach, and a group of young 'hoodlums' attempted to take the law in their own hands and rid these beaches of the Jews. They used the emblem of the Swastika, and generally raised a cry against the Jews. This spread to other parts of the City, due to the great publicity given to it by the newspapers and fighting took place around Willowvale Park so that many were injured, several gentile youths were arrested and some convicted. It was claimed by the Jewish papers that the Nazi Organization was behind the movement which had spread elsewhere, especially in Kitchener/(formerly Berlin) where many Germans resided. The better element in all places, however, did not lend a hand in these practices.

Through/the firm stand was taken by the Mayor, as well as by the efforts of the Committee for the Defence of Jewish Rights, the trouble has subsided.

Mayor Stewart averted what might have been serious disturbances by his fairness and his threats of punishment to those who take the law into their own hands and had the police investigate promptly. The Mayor issued a statement on August the 1st, after the anti-Jewish demonstrations, started in the Beach, part of which is as follows -

"Let it be understood with the utmost clearness that we administer our land through the Police courts, and not through private groups, clubs or demonstrations. We have an abundance of British ideals which our people might emulate and follow; we need no inspiration from foreigh sources and foreign issues, but simply a proper respect for law and order and British traditions ----------In these times one cannot lightly contemplate the actions of those who set race against race, and raise disturbances and animosities of a racial character. As

Mayor and Chairman of the Board of Police Commissioners, I will not tolerate, nor countenance any group ---- taking the law into their own hands --- (1)

After the "so-called riots" took place, Mayor Stewart called a special meeting of the Police Commissioners and afterwards issued a statement warning flaunters of Swastika emblems that thereafter they would be liable to arrest and prosecution as leading to a breach of the peace. (2)

When similar activities took place against the Jews in Kitchener, Ontario, the City Council, on August 15th last, passed the following Resolution, proposed by Alderman Mullins and Hearn.

'That this council looks with disfavor upon any organization that among their aims and objects brings oppression and discrimination upon any sect or creed, and that they call upon all public servants and citizens in general to discourage and prevent, as far as they are able, the fostering of such an objective by any club, body or organization'.

The motion was carried with Alderman Eby in opposition because he doubted the necessity of the resolution, and was satisfied to allow the Mayor and Police Department to use their judgment. (3)

Another way in which the City has shown its favor to the Jews is in the grants of money for purposes of charity to the Federation of Jewish Philanthropies.

In the appendix is a table and statement by the Executive Director of the Jewish Federation in this regard. (4)

From 1921 on the City made grants to the Jewish Federation, and later to the Family Welfare Bureau of the Federation in lieu of House of Industry supplies to destitute families, because Federation had born these

1. Mail & Empire, August 2, 1933, Toronto.
2. Mail & Empire, Toronto, August 18, 1933.
3. See, Toronto Daily Star, August 15, 1933.
4. See, p. 350.

costs themselves. These amounts were on the basis of the average House of Industry cost for the number of Jewish families who would have been eligible for same. However, Federation never received the full amount, in 1932 receiving 75% of $60,000. the amount it was entitled to (1).

In 1933, due to the unemployment, the relief would have amounted from $120,000 or $140,000. to preserve its character as a private agency, it sent its families for relief to the House of Industry and the voucher system.

Many grants were obtained from the City Council from 1928 to 1933 for general Federation work, being $5,000. and $18,750. in 1933. In 1922 and 1923 these funds, or part of them, were deposited in the Department of Public Welfare of the City for direct relief of unemployment and Provincial rebates were earned, making the amount to Federation larger than that of the original grant. In 1933 the Jewish Federation will receive $40,000. and the Federation for Community service $200,000.00.

The Jewish Children's Bureau, part of Federation, also receives large amounts of City funds on the basis of the number of cases. The cities share in the same for Protestant, Catholic and Jewish agencies.

1. See, Statement of Martin Cohn, Appendix, p. 350.

APPENDIX

List of Secretaries of State Administering the Affairs of the Colonies. (1)

(Henry Dundas, June 8, 1791
(
(Duke of Portland, August 7, 1794

Lord Hobart, March 17, 1801

Earl Camden, May 13, 1804

Viscount Castlereagh, July 10, 1805

William Windham, February 5, 1806

Viscount Castlereagh, March 25, 1807

Earl of Liverpool, October 11, 1809

Earl Bathurst, June 11, 1812

Viscount Goderich, April 30, 1827

William Huskisson, August 18, 1827

Sir George Murray, May 30, 1828

Viscount Goderich, November 22, 1830

E. G. (Lord) Stanley, March 28, 1833

Thomas Spring Rice, June 5, 1834

Earl of Aberdeen, December 20, 1834

Charles Grant (Lord Glenelg), April 18, 1835

Marquis of Normanby, February 20, 1839

Lord John Russell, August 30, 1839

Lord Stanley, September 3, 1841

British Governors of Canada. (2)

Murray, James	1763-1766
Carleton, Guy	1766-1778
Haldimand, Frederick	1778-1784
Dorchester, Lord (Carleton)	1786-1796
Prescott, Robert (not resident after 1799)	1797-1807
Milnes, Robert, Sir Lieut-Gov.	1799-1805
Dunn, Thomas (Acting)	1805-1807
Craig, James, Sir	1807-1811
Prevost, George, Sir	1812-1815
Drummond, Gordon, Sir, (Acting)	1815-1816
Sherbrooke, John Coape, Sir	1816-1818
Richmond, Duke of	1818-1819

British Governors of Canada (con)

Dalhousie, Earl of	1820-1828
Kempt, James, Sir	1828-1830
Aylmer, Lord	1830-1835
Gosford, Earl of	1835-1838
Colborne, John, Sir (Acting) and	Feb. 1838-May 1838, Nov. 1838-Oct 1839
Durham, Earl of	May 1838-Nov.1838
Thomson, Charles Poulett (afterwards Lord Sydenham)	1839-1841
Bagot, Charles, Sir	1842-1843
Metcalfe, Charles, Sir (afterwards Lord Metcalfe)	1843-1845
Cathcart, Earl of	1846-1847
Elgin, Earl of	1847-1854
Head, Edmund Sir	1854-1861
Monck, Lord	1861-1867

Lieutenant Governors and Adminstrators of Upper Canada (3)

Col. John Graves Simcoe, July 8, 1792

Hon. Peter Russell (Adm.) July 21, 1796

Lt.-Gen. Peter Hunter, August 17, 1799

Hon. Alexander Grant (Adm.) September 11, 1805

Francis,Gore, August 25, 1806

Maj.-Gen. Sir Isaac Brock, September 30, 1811

Maj.-Gen. Sheaffe (Adm.) October 20, 1812

Maj.-Gen. Rottenburg (Adm.) June 19, 1813

Sir Gordon Drummond (Adm.) December 13, 1813

Sir George Murray, April 25, 1815

Maj.-Gen. Sir Fred. Philipse Robinson, July 1, 1815

Sir Francis Gore, September 25, 1815

Hon. Samuel Smith (Adm.) June 11, 1817

Sir P. Maitland, June 30, 1820

Sir John Colborne, November 4, 1828

Sir F. Bond Head, January 26, 1836

Sir George Arthur, March 23, 1838.

(Union Proclamation dated February 10, 1841)

1.& 3. Ontario Archives Report,1920; Patterson,Land Settlement in Upper Canada,Appendix,p.246.

2. Egerton,History of Canada,Pt. II,Appen.

Oaths administered to Members of the Executive Council and Officials of Upper Canada (9th July, 1792).

Every Councillor must take the oath of allegiance, supremacy, and abjuration, and subscribe the test; after which he must take the following oath of office.

Oath of Office

You do swear that you faith and true allegiance bear unto His Most Sacred Majesty King George Third, and to his heirs and successors, and shall be true and faithful to His Excellency, as he is commissioned Captain General and Governor in Chief in and over this His Majesty's Province, and that you will in the place and office of his Majesty's Councillors of this Province, well and faithfully serve His said Majesty and promote the good of his Majesty's affairs with your best advice and counsel; You shall with your best ability defend this Province from all foreign, noxious and intestine insurrections; You shall not countenance or conceal any plot or seditious conspiracy, or any treasonable or seditious speeches against His said Majesty, his heirs or successors, or His said Excellency, but you shall give speedy notice thereof unto His said Excellency, or to some Member of the Council; the secret debates of the Council you shall not reveal directly or indirectly; all which you shall, to the utmost of your ability, perform. So help me God.

Oath of Allegiance

I, A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to His Majesty King George; so help me God.

Oath of Supremacy

I, A. B. do swear, that I do from my heart abhor, detest and abjure as impious and heretical, that damnable doctrine and position, that princes excommunicated or

deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm; so help me God.

Oath of Abjuration

I, A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our Sovereign Lord King George is lawful and rightful King of this realm, and all other His Majesty's dominions thereunto belonging. And I solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be Prince of Wales during the life of the late King James the Second, and since his decease pretended to be, and took upon himself the style and title of King of England, by the name of James the Third, or of Scotland by the name of James the Eighth, or the style and title of King of Great Britain hath any right, or title whatsoever, to the Crown of this realm, or any other the dominions thereunto belonging. And I do renounce, refuse and abjure any allegiance or obedience to any of them. And I do swear, that I will bear faith and true allegiance to His Majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to His Majesty and his successors, all treasons and traitorous conspiracies which I shall know to be against him or any of them. And I do faithfully promise to the utmost of my power, to support, maintain and defend the succession of the Crown against the descendants of the said James, and

against all other persons whatsoever; which succession, by an Act Intituled, An Act for the further limitation of the Crown, and better securing the rights and liberties of the subject, is and stands limited to the Princess Sophia, Electress and Duchess Dowager of Hanover and the heirs of her body being protestants.

And all these things I do plainly and sincerely acknowledge and swear according to these express words by me spoken and according to the plain and common sense and understanding of the same words without any equivocation, mental evasion or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation and promise, heartily, willingly and truly upon the true faith of a Christian; so help me God.

The Test

I, A. B. do declare that I do believe that there is not any transubstantiation in the Sacrament of the Lord's Supper or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.

(Vide page 72.)

IMPERIAL ACT OF 1740 (NATURALIZATION) AFFECTING COLONIES

13 George 2nd, Chapter 7

An Act for Naturalizing such Foreign Protestants and Others Therein Mentioned, as are Settled or shall Settle in any of His Majesty's Colonies in America.

Whereas the increase of people is a means of advancing the wealth and strength of any Nation or Country; and Whereas many Foreigners and Strangers from the Lenity of our Government, the Purity of our Religion, the Benefit of our Laws, the Advantages of our Trade, and the Security of our Property, might be induced to come and settle in some of His Majesty's Colonies in America, if they were made Partakers of the advantages and privileges which the natural born subjects of this Realm do enjoy; Be it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of June in the year of our Lord, one thousand, seven hundred and fourty, all persons born out of the Ligeance of His Majesty, His Heirs and Successors, who have inhabited and resided or shall inhabit or reside for the Space of seven years or more, in any of His Majesty's Colonies in America, and shall not have been absent out of the same of the said Colonies, for a longer Space then two months at any one time during the said seven years, and shall take and subscribe the Oaths, and make, repeat and subscribe the Declaration appointed by an Act made in the first year of the Reign of his late Majesty, King George, the first, entitled An Act for the further Security of His Majesty's Person and Government and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants; and for extinguishing the Hopes of the pretended Prince of Wales, His open and secret

abettors; or, being of the people called Quakers, shall make and subscribe the Declaration of Fidelity, and take and affirm the Effect of the Abjuration Oath, appointed and prescribed by an Act made in the eight year of the Reign of his said Late Majesty entitled an Act for granting People called Quakers such forms of Affirmation and Declaration, as may remove the difficulties which many of them lie under; and also make and subscribe the Profession of his Christian Belief, appointed and subscribed by an Act made in the first year of the Reign of their late Majesties King William and Queen Mary, entitled An Act for exempting their Majesty's Protestant subjects, from the Penalties of Certain Laws; before the Chief Judges or other Judge of the Colony wherein such persons respectively have so inhabited and resided, or shall inhabit and reside, shall be deemed, 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 born within this Kingdom; which said Oath or Affirmation and Subscription of the said Declarations respectively, the Chief Judge or other Judge of every of the said respective Colonies is hereby enabled and impowered to administer and take; and the taking and subscribing of every such Oaths or Affirmation and the making, repeating, and subscribing of every such Declaration, shall be before such Chief Judge or other Judge, in Court between the hours of nine and twelve in the forenoon; and shall be entered in the same Court and also in the Secretary's Office of the Colony wherein such person shall so inhabit and reside; And every Chief Judge or other Judges of every respective Colony, before whom such Oaths or Affirmation shall be taken, and every such Declaration shall be made, repeated, and subscribed as aforesaid, as hereby required,

make a due and proper entry thereof in a Book to be kept for that purpose in the said Court; for the doing whereof two shillings and no more, shall be paid at each respective place, under the Penalty and Forfeiture of ten pounds of lawful money of Great Britain for every neglect or omission; And in like manner every Secretary of the Colony wherein any person shall so take the said Oaths and Office, and make, repeat, and subscribe the said Declarations respectively, as aforesaid, is hereby required to make a due and proper Entry thereof in a Book to be kept for that purpose in his Office, upon Notification thereof to him by the Chief Judge or other Judge of the same Colony, under the like Penalty and Forfeiture for every such neglect and omission.

11. Provided always and be it enacted by the authority aforesaid, that no person, of what Quality, Condition or Place soever other than and except such of the people called Quakers as shall qualify themselves and be naturalized by the Ways and Means herein before mentioned, or such who profess the Jewish Religion, shall be naturalized by virtue of this Act, unless such person shall have received the Sacrament of the Lord's Supper in some Protestant and Reformed Congregation within this Kingdom of Great Britain, or within some of the said Colonies in American, within three months next before his taking and subscribing the said Oaths, and making, repeating, and subscribing the said Declaration; and shall, at the time of his taking and subscribing the said Oaths, and making, repeating, and subscribing the said Declaration produce a Certificate signed by the person administering the said Sacrament, and attested by two credible witnesses, whereof an Entry shall be made in the Secretary's Office of the Colony, wherein such person shall so inhabit and reside, as also in the Court where the said Oaths shall

so taken as aforesaid, without any fee or Reward.

111. And 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, so Be it further enacted by the authority aforesaid, that that whenever any person professing the Jewish religion shall present himself to take the Said 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 an Act made in the tenth year of the Reign of his late Majesty, King George first, entitled An Act for explaining and amending An Act of the last session of Parliament entitled, An Act to oblige all persons being Papists, in that part of Great Britain called Scotland, and all persons in Great Britain refusing or neglecting to take the Oaths appointed for the security of His Majesty's Person and Government by several acts herein mentioned to register their names and Real Estates; and for enlarging the time for taking the said Oaths, and making such registers and for allowing further time for the inrolment of Deeds or Wills made by the Papists which have been omitted to be inrolled pursuant to an Act of the third year of His Majesty's Reign; and also for giving Relief to Protestant Lessees, shall be deemed a sufficient taking of the said Oaths, in order to entitle such person to the Benefit of being naturalized by the virtue of this Act.

IV. And be it further enacted by the authority aforesaid, that a Testimonial or Certificate under the Seal of any of the said Colonies, of any persons having resided and inhabited in the Space of seven years or more as aforesaid within the said Colonies or some of them, to be specified in such Certificates, together with the particular time of residence in each of such respective Colonies (whereof the Colony under the Seal of which such Certificate shall be given to be One) and to his having taken and subscribed the said Oaths and of his having made, repeated and subscribed the said Declaration; and in case of a Quaker of his having made and subscribed the Declaration of Fidelity, and of his having taken and affirmed the Effect of the Abjuration Oath as aforesaid; and in the case of a person professing the Jewish religion, of his having taken the Oath of Abjuration as aforesaid, within the same Colony, under the Seal whereof such Certificates shall be given as aforesaid, shall be deemed and taken to be a sufficient Testimony and Proof thereof, and of his being a natural born subject of Great Britain, to all Intents and Purposes whatsoever and as such shall be allowed in every Court within the Kingdoms of Great Britain and Ireland, and also in the said Colonies in America.

V. And be it further enacted by the authority aforesaid, that every Secretary of the said respective Colonies for the time being, shall and is hereby directed and required at the end of every year to be computed from the said first day of June in the year of Our lord one thousand, seven hundred and fourty, to transmit and send over to the Office and Commissioners for Trade and Plantations kept in the City of London or Westminster, a true and perfect List of the Names of all and every person and persons who have in that year entitled themselves

to the Benefit of this Act, under the Penalty and Forfeiture of fifty pounds of lawful money of Great Britain for every neglect or ommission; All such said lists so transmitted and sent over, shall from year to year be duly and regularly entered by the said Commissioners in a Book or Books to be had and kept for that purpose in the said Office, for Public view and inspection as occasion shall require.

VI. Provided always and it is hereby further enacted, That no persons who shall become a natural born subject of this Kingdom by virtue of this Act shall be of the Privy Council, or a Member of either House of Parliament, or capable of taking, having, or enjoying any Office or Place of Trust within the Kingdoms of Great Britain or Ireland, either Civil or Military, or of having, accepting, or taking any Grant from the Crown to himself or to any other Trust for him, of any Lands, Tenements, or Hereditaments within the Kingdoms of Great Britain or Ireland; any Thing herein before contained to the contrary thereof in any wise notwithstanding.

NATURALIZATION ACT OF 1773 (IMPERIAL) AFFECTING COLONIES

13 George 3rd, Chapter 25

An Act to explain two Acts of Parliament, One of the thirteenth year of the Reign of His late Majesty, for naturalizing such Foreign Protestants, and others as are settled or shall settle in any of His Majesty's Colonies in America; and the other of the second year of the Reign of His present Majesty, for naturalizing such Foreign Protestants as have served, or shall serve as Officers or Soldiers in His Majesty's Royal American Regiment, or as Engineers in America.

Whereas by an Act made in the thirteenth year of the Reign of His late Majesty, King George 2nd, (entitled an Act for naturalizing such Foreign Protestants and others therein mentioned as are settled or shall settle in any of His Majesty's Colonies in America), all persons born out of the Allegiance of His Majesty, His Heirs or Successors, who shall have inhabited and resided, or shall reside, for the Space of seven years, or more, in any of His Majesty's Colonies in America, or shall not have been absent out of the said Colonies for a longer space than two months at any one time, during the said seven years, are upon the conditions prescribed by the said Act, naturalized and made Partakers of all the Benefits and Privileges which the natural born subjects of this Realm do enjoy; other than such as are specified in a Proviso in the said Act contained: And Where as by an Act made in the second year of the Reign of his present Majesty (entitled An Act for naturalizing such Foreign Protestants as have served, or shall serve for the time Therein mentioned, as Officers or Soldiers in His Majesty's Royal American Regiment, or as Engineers in America) it is enacted, That all such Foreign Protestants, as well Officers and Soldiers who have served or shall

hereafter serve, in the Royal American Regiment, or as Engineers in America, for the space of two years, shall upon the terms required by the said recited Act be deemed, 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; and in both Acts respectively are contained Provisos, That no person who shall become a natural born subject of this Kingdom by virtue of the said Acts shall be thereby enabled to be of the Privy Council, or a Member of either House of Parliament, or to be capable of taking, having, or enjoying any Office or Place of Trust within the Kingdom of Great Britain or Ireland, either Civil or Military, or of having, accepting, or taking any Grant from the Crown, to Himself, or to any other trust for him, of any Lands, Tenements, or Hereditaments, within the Kingdom aforesaid; And whereas doubts may nevertheless arise, whether such persons as have been, or may be naturalized under or by virtue of the said recited Acts are capable of taking, having, or enjoying any Office or Place of Trust, either Civil or Military or of taking any Grants of Land, Tenements, and Hereditaments, from the Crown whatsoever; Be it enacted and declared by the King's Most Excellent Majesty, by and with the advice and Consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, 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, 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 Grants of Lands, Tenements and Hereditaments, from the Crown to himself or themselves, or to any other or others in Trust

for him or them as well under the Great Seal of Great Britain as otherwise (other then 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.

STATUTES OF CANADA, 9 Victoria, Chapter 56

An Act to Amend the Act of Lower Canada therein mentioned extending certain privileges to persons of the Jewish persuasion.

(9th of June 1846)

Whereas the provisions of a certain Act of the Provincial Parliament of the late Province of Lower Canada passed in the ninth year of the Reign of King George 4th and entitled "An Act to extend certain privileges therein mentioned to persons professing the Jewish religion, and for the obviating certain inconveniences to which others of His Majesty's subjects might otherwise be exposed," have proved insufficient for several of the purposes for which the said Act was intended, and it has been found necessary to make further provisions for the said purposes; and whereas divers persons of the Jewish faith, calling themselves Portuguese Jews, and also divers persons of the Jewish faith calling themselves German and Polish Jews are and for a considerable time have been, in possession of Synagogues in the city of Montreal and form separate congregations under the names of the Congregation of Portuguese Jews of Montreal, and of the Congregation of German and Polish Jews of Montreal:

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 entitled "An Act to reunite 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 from and after the passing of this Act it shall be

lawful for the said persons of the Jewish faith calling themselves Portuguese Jews or for the said persons calling themselves German and Polish Jews, being inscribed and registered in the manner provided by the aforesaid Act and being members respectively of the said Synagogues or any ten or more of them to assemble or meet together from time to time at their respective Synagogue at such day and at such hour as they shall see fit, of which previous notice of at least three entire weeks shall be given in writing to each member and shall be affixed on the outside of the principle door of the said Synagogues respectively; and the said members of the said respective Congregations so assembled at their respective Synagogues shall elect from among themselves a President, Treasurer, and Secretary, and three Trustees of their Congregation and shall record and enter all proceedings had in a register to be kept for that purpose by the said respective secretaries.

2. And be it enacted, That the said President, Trustees, Treasurer, and Secretary of each of the said Congregations respectively elected and appointed in the manner provided by this Act, shall by a body corporate and politic under the name and description of the corporation of the Portuguese Jews of Montreal, or of the corporation of the German and Polish Jews of Montreal as the case may be and by that name may sue and be sued, and may contract and be contracted with, and may hold estate and property moveable and immoveable not exceeding four hundred pounds per annum of yearly value, free and clear of all charges and shall have perpetual succession and a common seal with power to change the same at pleasure, and may appoint and induct the Rabbi or officiating minister of the Synagogue or Congregation and him at pleasure may remove and appoint and induct another in his place at all times hereafter; and such Rabbi or officiating minister being so appointed and complying with

the other provisions of the Act first above cited, shall not need to obtain a licence from the Governor or person administering the Government and shall nevertheless have all the powers conferred by the said Act on Ministers so licenced.

3. And be it enacted that the election and appointment of the said President, Trustees, Treasurer, and Secretary shall be and enure for the full end and term of one year and no more at the expiration of each period they shall be replaced by others to be elected and named in the manner aforesaid, or may be relected; and if any one or more of the said President, Trustees, Treasurer, or Secretary shall die naturally or civilly or cease to be resident in the district of Montreal within the said period of one year for which he shall have been so elected, then and in such case another person shall be relected in the manner aforesaid in the room and place of the person who shall have so died or ceased to be a resident as aforesaid and shall continue in office until the expiration of the term during which his predecessor had been appointed to serve.

4. And be it enacted, That all legacies, gifts, or bequests heretofore madeby any person, or persons, body or bodies, politic or corporate who have the use, benefit or behalf of either of the said Jewish Synagogues or Congregations, shall be vested in the particular Synagogue or Congregation established as a corporation by this Act in favour of which any such legacy, gift, or bequest may have been made and shall be considered as part and parcel of the estate moveable and immoveable, as the case may be, which the Said corporations are hereby empowered to hold and possess; provided the whole immoveable property held by the said corporations do not exceed the yearly value aforesaid.

5. And be it enacted That so much of the said Act first above cited, or of any other Act or Law as may be inconsistent with the provision of this Act, shall be and is hereby repealed.

ACT PROCLAIMING RELIGIOUS EQUALITY IN CANADA.

14 & 15 Victoria, Chapter 175, 1851.

An Act to Repeal so much of the Act of Parliament of Great Britain passed in the thirty-first year of the Reign of King George 3rd and Chaptered 31 as Relates to Rectories, and the Presentation of Incumbents to the same and for other purposes connected with such Rectories.

Reserved for the signification of Her Majesty's pleasure, 30th August 1851.

The Royal assent given by Her Majesty in Council on the 15th May 1852; and proclamation made thereof by His Excellency James, Earl of Elgin and Kincardine in the Canada Gazette of the 9th June, 1852.

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 polity; 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 entitled, An Act to reunite the Provinces 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

of the Province, is by the constitution and laws of this Province allowed to all Her Majesty's subjects within the same.

11. And whereas the provisions of this Act of the Imperial Parliament of Great Britain passed in the thirty-first year of the Reign of His late Majesty, King George Third, entitled An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled 'An Act for making more effectual provision, for the Government of the Province of Quebec in North America' and to make further provision in the Government of the said Province. Whereby the erection of Parsonages or Rectories in this Province, according to the establishment of the Church of England, the endowment of such Parsonages or Rectories out of the Clergy Reserves and the presentation of Incumbents or Ministers to such Parsonage or Rectory is vested in the Government of this Province, have been found to give occasion to doubts and apprehensions which it is desirable should be removed by the repeal of the same under the power for that purpose vested in the Provincial Parliament by the provisions of the said Imperial Act -- Be it therefore enacted, that the thirty-eighth, thirty-ninth, and fourtieth sections of the said act shall be and the same are hereby repealed; and that from henceforth, no Letters Patent shall be issued in this Province by the Crown for the erection of any such Parsonage or Rectory or for the endowment thereof, out of the Clergy Reserves or the Public Domain, or in the presentation of any Incumbent or Minister to any such Parsonage or Rectory; Provided always, that neither such repeal nor anything herein contained, shall in any wise 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 Parsonage or Rectory, 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; And provided also, that nothing herein contained shall extend or be construed to extend, to limit or in any way affect or interfere with the provisions of the twenty-seventh section of the Act of the Parliament of this Province, passed in the Session thereof, held in the fourth and fifth years of Her Majesty's Reign, entitled An Act for the disposal of public lands.

111. And be it enacted, That in the event of its being judicially decided that any of such Parsonages or Rectories were erected according to law, and until a judicial decision shall be obtained on such question the right of presenting an Incumbent or Minister to such Parsonage or Rectory shall vest in and be exercised by the Church Society of the Church of England Diocese within which the same shall be situated, or any such other person or persons, bodies politic or corporate, as such Church Society by any By-law or By-laws to be by them from time to time passed for that purposes, shall or may think fit to direct or appoint in that behalf.

ACT INCORPORATING ANSHE SHOLEM HAMILTON

STATUTES OF CANADA, 26 Victoria, Chapter 34.

An act to incorporate the Jewish Congregation Anshe-Sholem of Hamilton. (assented to May 5, 1863).

Whereas the members of the Hebrew Benevolent Society Anshe-Sholem of Hamilton, hereinafter named, have by their petition set forth that they have in contemplation the erection of a Synagogue and have prayed to be incorporated, and it is expedient to grant their prayer. Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada enacts as follows:-

1. Jacob Frey, Isaac Levy, Henry Zinshumer, Samuel Desbecker, Leopold Rosenband, Daniel Shire, Simon Shire, Leopold Loeb, Isaac Shire, William Loeb, Mendel Levy, Abraham Levy, Iberman Levy, Jonas Draenger, Solomon Ungar, H. Wolf, Bernhard Weinberg, Abraham Saimon, and Louis Daniels together with such other persons as may hereafter become members of the said Society, shall be and they are hereby constituted a Body Corporate and Politic under the name of the Jewish Congregation Anshe-Sholem, of Hamilton and by that name shall have power from time to time, and at any time hereafter to purchase, hold, possess and enjoy for themselves and their successors Lands and Hereditaments in Upper Canada, not exceeding the value of five thousand pounds for the purposes of a Synagogue and schools and other buildings requisite for the use of the said Congregation and also for a burying ground, and from time to time sell, alienate and dispose of the said lands and hereditaments and to purchase and acquire other lands and hereditaments instead thereof, for the same purposes, and from time to time as occasion may require to mortgage or charge the said lands and hereditaments or any part thereof.

2. The officers of the said Congregation shall consist of a President, Vice-president, a Treasurer, and a Secretary who shall be elected by ballot by the members for the time

being of the said Congregation annually, at the annual general meeting to be held on the first day of October in every year, or on such other day as may be appointed by the by-laws of the said Congregation; and the officers so appointed shall have the right to exercise such powers and authorities for the due management and administration of the affairs of the Congregation as may be conferred upon them by the regulations and by-laws of the said Congregation.

3. The present officers of the said Society shall continue in office until their successors shall be appointed at the first annual meeting of the said Congregation to be held next after the passing of this Act.

4. It shall be lawful for the said corporation to make and establish all such rules, regulations, and by-laws as they may consider requisite and expedient for the interest and administration of the affairs of the said Congregation and for the admission and expulsion of members and for the mode of filling vacancies occasioned by the death, removal, or absence of any of the officers of the Congregation, and to amend and repeal the same from time to time in whole or in part; provided always that such rules, regulations and by-laws shall not be inconsistent with this Act, nor with the laws for the time being in force in Upper Canada.

5. This Act shall be deemed a Public Act.

Chapter 57, 56 Victoria, STATUTES of Nova Scotia,

An Act relating to a Jewish Cemetery at Halifax.

(passed the 28th day of April 1893)

Be it enacted by the Governor, Council, and Assembly as follows:-

1. The Jews residing in the city of Halifax shall be at liberty to bury the dead in the lot of land recently purchased by A. L. Michaels and others, from W. A. Hendry, at or near the Three Mile House.

2. Section 589 of Chapter 58, of the Acts of 1891, entitled "An Act to consolidate and amend the acts relating to the city of Halifax," is hereby amended by adding after the word "Three Mile House", at the end of the section, the following; "and the Jewish Cemetery and Burial Ground near Three Mile House."

STATUTE OF EDWARD VII, Chapter 76,
Assented 28th March 1907

An Act to incorporate The Hebrew Congregation of Sydney.

Be it enacted by the Governor, Council, and Assembly as follows:-

1. Philip Cohen, Hyman Davidson, Max Bonavitsky, Hyman Brody, William Bonavitsky, Harry Green, Max Nathanson, Israel Nathanson, B. Wolfe and such other persons as are or shall become members of the Association hereby incorporated, are hereby constituted a body corporate under the name of "The Hebrew Congregation of Sydney, Nova Scotia".

2. The objects of the Society shall be:-

(a) To promote the moral and spiritual welfare of its members.

(b) To provide by entrance fees, contributions, donations, fines, levies, rent and interest on capital, a place of worship and accommodation therein for its members and their families.

3. The constitution and by-laws of the said Association by this Act incorporated, shall, when approved by the Governor-in-Council by the constitution and by-laws of the said corporation, and the said corporation may from time to time make, alter, and repeal said by-laws to carry into effect the objects of the said corporation. But such constitution and by-laws and every alteration and amendment thereof, shall be subject to the approval of the Governor-in-Council.

4. The corporation may collect all monies due them or to become due them, under the constitution and by-laws of said society and shall have power to sue and be sued in the corporate name for all claims and demands due to or owing by said corporation.

Edward VII Cap 76

5. The real and personal property of the Society, and all debts due them, are vested in the corporation hereby created, who may purchase, take, hold, and enjoy real estate by ownership, lease or otherwise, to the value of ten thousand dollars, and may sell, mortgage, lease, convey or otherwise dispose of the same for the benefit of said society and may invest its funds in any way it may think fit, including investments by mortgage of real or personal estate or both.

M^r Allsopp

1769

Aaron Hart

S^r.

Shall take it as a favour if you will send me a Licence by the return of the Post and you will

oblige

S^r. your Most hum. S^r.

AARON HART

My Com^s. to

M^rs Allsopp

1770

Montreal 3^d. Sep^r. 1770

Isaac Levy

Sir

I shall take it as a partickluer favour if you will be so good as to send M^r. Moses Hart a Licence - as he is going to do a Little Business for him self

Doing so you will

Greatly Oblige your

Friend & Humble Serven^t.

ISAAC LEVY

Answered verbal

George Allsopp, Esq^r.

1770

Moses Hart

Montreal 10^th Sep^er. 1770

Sir

I Should be for ever obliged to you if you would let me have the Licence as soon as possible you Could as I Can begin nothing till such time I have it I beg you will send it by return of the post & you will

Greatly Oblige your most

Ob^t. & Humble Serv^t.

Answer'd verbal

MOSES HART

REGISTRATION TO PERSONS PROFESSING THE JEWISH RELIGION. KEPT UNDER THE PROVINCIAL STATUTE 9 & 10 GEORGE IV. Chapter 75.

Register to remain of Record in the Prothonotaries Office for the District of Montreal, wherein persons residing in the said District being British subjects and professing the Jewish Religion being above the age of twenty-one years, may under and by virtue of the provincial statute, 9 & 10 Chapter 75. inscribe their names, ages, additions and places of residence.

Monk & Mowatt.(?)

P.K.S.

Oath to be taken in conformity with the said Statute.

I, A.B. do swear that I believe myself to be of the fullage of twenty-one years and that I am a British subject professing the Jewish faith:-

1. Henry Joseph Senior, 55 years Merchant, Berthier,
2. Alexander Hart, 48 years Gentleman, Montreal.
3. Benjamin Hart, 51 years Merchant, Montreal
4. Isaac Valentine, 43 years Gentleman, Montreal.
5. M.J. Hays, 32 years Gentleman, Montreal
6. M. Salomon, 42 years Furrier, Montreal
7. M. Davis, 28 years " "
8. Samuel Davis, 40 years " "
9. M. Hart, 62 years Merchant, "
10. M. Hallis M. Cohen, 32 years Merchant, Montreal.
11. Jacob Jacobs, 33 years merchant, Montreal.
12. Isidore Aaron, 39 years Merchant, Montreal.
13. S. Joseph, 29 years merchant, Berthier,
14. S.H. David, 21 years, student at Law, Montreal
15. A.D. Hart, 21 and over, Advocate, Montreal
16. A.D. David, 25, Physician, Montreal
17. Jacob H. Joseph, 22 Merchant, Montreal
18. Samuel Hort, 21 years Merchant, Montreal
19. Theodore Hart, 21 " " "
20. Henry Bernstein, 47 years Teacher, Montreal
21. Moses Samuel David, 21 years Gentleman, Montreal
22. David Pisa, 22 years Merchant, Montreal
23. Jesse Joseph, 22 years Merchant, Montreal
24. Myer Solomon, 23 years student, Montreal.

Lewis Lyon, 42 years Merchant, Montreal

Lambert H. Phillips, 37 years Merchant, Montreal

3/3 73'/c 31 years Merchant, Montreal

PROVINCE OF LOWER CANADA,

DISTRICT OF MONTREAL.

To the Honorable the Chief Justice and the Justices of His Majesty's Court of the King's Bench, of and for the District of Montreal

The petition of Benjamin Hart of the City of Montreal, in the District aforesaid, Esquire, Alexander Hart of the Parish of Montreal in the District aforesaid Esquire Moses Judah Hayes of the City of Montreal aforesaid Esquire Isaac Valentine of the same place, Esquire Isaac Aaron of the same place, Gentleman Aaron Philip Hart of the same place Esquire, and Isaaare David David of the same place Esquire,

Respectfully sheweth

That in the pursuance of one act passed in the ninth and tenth years of the Reign of His Late Majesty George the Fourth, Chapter 75, Entitled "One act to extend certain Privileges therein mentioned to persons professing the Jewish Religion and for the Abviating certain inconveniences to which other of His Majesty's subjects might be Exposed "The Prothonotaries of the said district of Montreal, did immediately after the passing of the said act open and keep a Register to remain of record wherein any person residing in the said District being a British Subject professing the Jewish Religion and above the age of twenty-one years might inscribe his name, age addition and place of residence after oath by him made before the same prothonotary that he believed to be of the full age of twenty one years. That he was a British Subject and professing the Jewish Religion.

That in and by the said act, it was amongst other things enacted, that when and so soon as fifteen persons should have been so registered, it should and might be lawful for any Justice of the Court of King's Bench upon Petition to that effect made by several persons so registered in his District, to convene a public meeting of all persons so enregistered within his District, to be held in the Chief City or Town thereof and at such place therein, and at such time as the said Justice shall deem it advisable to appoint and to name some Justice of the peace for the said District to preside at such meeting and to make his return of the proceedings thereat to the prothonotary of the Court of Kings Bench for the said District.

rovided that the dat on which such meeting be held shall not be more than sixty
r less than thirty days after the said petition shall have been presented and
hat due notice of such meeting shall be given by inserting such notice during two
eks in such public newspapers as the said Justices may appoint.

hat in pursuance of the Act aforesaid fifteen persons, residing in the said
istrict of Montreal being British subjects professing the Jewish faith and above the
e of twenty one years have inscribed their names, ages, additions and places
f residence in the Register so kept as above mentioned, by the Prothonatary of the
aid District of Montreal after oath by each of them individually made before the
aid prothonotary that he believed himself to be of the full age of twenty-one years
nd that he was a British subject professing the Jewish Faith as appears by the certificate
f the said prothonotary bearing date the eleventh day of September instant.

hat your Petitioners are seven of the number so enregistered as aforesaid,

herefore they pray that your Honors or one of Your Honors will be leased to convene
public Meeting of all persons so enregistered in this district of Montreal, to be held
n the City of Montreal at such place therein and at such a time as Your Honors or one of
our Honors may deem it advisable to appoint and that Your Honors or one of Your
Honors will be pleased to name some Justice of the Peace for the said District to preside
t such meeting and to make his return of the proceedings thereat to the prothonotary
f the Court of King's Bench of this District and you will do justice.

Montreal, 11th, September, 1832

SIGNED:- Aled. Hart,
M.I. Hays,
Isaac Valentine,
Isaac Aarons,
B. Hart,
A.P. Hart,
E.D. David,

ISTRICT OF MONTREAL

y virtue of the provincial statute made and passed in the ninth and tenth years of the
eign of his late Majesty George the Fourth, entitled "An Act to extend Certain Privileges

-4-

a therein mentioned to persons professing the Jewish Religion, and for the obviating certain inconveniences to which others of His Majesty's subjects might be exposed," and upon petition of Benjamin Hart., Alexander Hart, Moses Judah Hayes, Isaac Valentine, Isaac Aaron, Philip Hart, and Eleazar David David, being seven of the persons professing the Jewish Religion whose names with others to the number of fifteen are inscribed in the Register kept by the Prothonotaries of the Court of King's Bench for this district in conformity to the said Statute, I the undersigned, One of His Majesty's Justices of the said Court of Kings, do order that a public Meeting of the said persons so professing the Jewish Religion and whose names are so inscribed be held at the Court House at the City of Montreal, on the fifteenth day of October next, and that being assembled the said persons do then and there proceed to the elections of five trustees as authorised and directed by and for the several purposes mentioned in the said Statute. And I do further order that Austins Cuvillier, Esquire, one of His Majesty's Justices of the Peace for the said district, do preside at the said meeting and that he do return the proceedings thereof into the Office of the Prothonotaries of the said Court of King's Bench for the District of Montreal there to remain of record and further that the present order be inserted during two weeks in the Montreal Gazette, published in this City. Given under my hand at the City of Montreal, this twelfth day of September, in the year of our Lord, One Thousand Eight Hundred and Thirty Two in the third year of His Majesty's Reign.

SIGNED:-

GEORGE PYKE, I.K.B.

PROVINCE OF LOWER CANADA, DISTRICT OF MONTREAL.

To the Honorable The Chief Justice and Justices of Her Majesty's Court of Kings Bench of and for the District of Montreal,

The Petition of Isaac Valentine, Moses Judah Hays, Aaron Philip Hart, Jacob Henry Joseph, Aaron Hart, David Samuel Hart, and Eleazar David David all of the City and District of Montreal, Esquires Respectfully sheweth,

That under and by virtue of an order made by the Honorable George Pyke, on the twelfth day of September, One Thousand Eight Hundred and Thirty Two, a public meeting of persons professing the Jewish faith and whose names were inscribed in the Register kept for that purpose by the prothonotary of the Court of

Kings Bench in conformity to the statute in that case made and provided,was held at the Court House in this City, on the Twelfth day of October, One Thousand Eight Hundred and Thirty Two at which meeting five persons, to wits., the said Isaac Valentine, Moses Judah Hayes, Benjamin Hart, Henry Solomon and Isaac Barons all of Montreal were by a majority of voteas duly elected Trustees of the Jewish Congregation for the purposes of the said statute.

That by the said statute it is deprisely enacted that no Trustee shall remain in office longer than five years.

That five years having now nearly elapsed, it has become necessary to name five other persons to act as Trustees as aforesaid for five years to be computed from the Twelfth day of October now nixt.

Wherefore your petitioners pray that Your Honors or one of Your Honors will be Pleased to convene as public meeting of persons so enregistered as aforesaid in the District of Montreal at such time and place as your Honors may appoint for the purposes aforesaid. And you will do Justice.

Montreal, 6th, September 1837.

SIGNED:-

Isaac Valentine,

M.I. Hayes,

A.H. David,

A.P. Hart,

Samuel Hart,

J.H. Joseph,

B.D. David,

DISTRICT OF MONTREAL

By virtue of the Provincial Statute in the behalf made and provided I do order that a public meeting of persons professing the Jewish Faith and whose names are inscribed in the Register kept by the Prothonotary of the Court of Kings Bench for this District in conformity to the said statute, be held at the Office of the Montreal Water Works on Tuesday the Tenth day of October next, at the hour of two of the clock in the forenoon, then and there to proceed to the elections of five Trustees as

directed by the said Act for the several purposes therein mentioned.

Montreal, 6th September, 1837.

SIGNED:-

GEORGE PYKE .

I.K.B.

DISTRICT OF MONTREAL, PROVINCE OF LOWER CANADA

At a meeting of persons professing the Jewish Faith whose names are registered in the Register Kept for that purpose by the Prothonotaries of this District, held at the office of the Montreal Water Works Company pursuant to orders in that behalf granted by the Honorable George Pyke one of the Justices of Her Majesty's Court of King's Bench of and for the District of Montreal in virtue of the Statute in that case made and provided and duly published in the Montreal Gazette held this day,

PRESENT, I. Valentine, Esquire
B. Hart, "
M.J. Hayes, "
I.N. Joseph, "
Samuel Hart, "
Theodore Hart, "
Aaron H. David, "
Henry Bernstein, "
E.D. David, "

Isaac Valentine, Esq., Chairman of the Trustees formerly elected in the Chair. Mr. E.D. David was requested to act as Secretary.

The business of the meeting having been stated by the Chairman, the persons present proceeded to vote for the elecrions of five trustees for the ensuing five years, whenn the following gentlemen were declared duly elected, they having a majority of votes, that is to say.

Moses Judah Hayes of Montreal, Esq.

Isaac Valentine of Montreal, Esq.,

Benjamin Hart of Montreal, Esq.,

Jacob H. Joseph, of Montreal, Merchant,

Aaron H. David, of Montreal, Physician

I certify the above to be a correct return of the proceedings had at the meeting, held pursuant to the said order, this 10th day of October, 1837.

SIGNED:- Isaac Valentine,

Chairman, H.C.

Montreal, 10th October, 1837.

MONTREAL, KINGS BENCH,

TO THE HONORABLE THE JUSTICES OF THE COURT OF KINGS BENCH FOR THE DISTRICT OF MONTREAL.

The Petitions of the undersigned duly registered members of the Jewish Persuasio residing in the said district of Montreal,

Respectfully sheweth,

That Benjamin Hart, Esq., of the City of Montreal and Aaron Hart David, Esq., late of Montreal, aforesaid Trustees of the Jewish Persuasion elected at a meeting of the members of the said Persuasion held under and by virtue of the statute in such case provided have resigned their said office of Trustee aforesaid, and that it becomes necessary to call a Meeting according to the requirement of the law of the members or persons professing the said Religious registered in the said District for the purpose of supplying the said vacancies.

Wherefore Your Petitioners pray that your Honors or one of you, will be pleased to convene a Public Meeting of all persons registered according to the requirements of the statute in such case provided to be held in the City of Montreal at such time and place therein as your Honors or one of you shall deem it advisable for the purpose of appointing two trustees in the place and stead of the said Benjamin Hart and Aaron Hart David, Esquires,

SIGNED:-

B. Hart,

Theodore Hart,

M.H. Hays

Isaac Valentine,

I.H. Joseph,

Samuel Hart,

Jesse Joseph

Let a public meeting of all persons professing the Jewish Religion and being duly registered as required by the said statute, be concened for the purpose of appointing two trustees.

Trustees as above provided for and let the said Meeting be held at the Jewish Synagogue in the City of Montreal on the thirty first day of July, next, at the hour of ten of the clock in the forenoon of that day and let due notice of such meeting be given by inserting the same during two weeks in the Montreal Gazette published in the said city of Montreal

SIGNED:-

SAMUEL GALES, I.K.B.

Montreal, 31st, July 1849

At a meeting of the registered Members of the Jewish persuasion, duly convened this day at the Synagogue by and order of one of the Justices of Her Majesty's Court of Kings Bench for the election of Five Trustees, in theplace of Benjamin Hart, A.M. David, M.D. esquires, Resigned,

The following persons were duly elected Trustees

SAMUEL HART,

THEODORE HART

The meeting then adjourned there being no further business, after which at a meeting of the Trustees for the elections of a President & Secretary.

Isaac Valentine was elected President, and Samuel Hart -Secretary.

SIGNED:-

Isaac Valentine, President,

Samuel Hart, Secretary.

PROVINCE OF LOWER CANADA

DISTRICT OF MONTREAL

TO WIT:-

We, the undersigned, Joint Prothonotary of Her Majesty's Court, King's Bench, of and for the District of Montreal, do hereby certify that under the provisions of the Statute of 9th and 10th, George IV, Chapter 75, Fifteen persons professing the Jewish Faith being of the age of Majority and being duly enregistered according to the provisions of the said statute did at a meeting held at the said City of Montreal, convened by the Honorables George Pyke Esq., senior puisni Justice of the said Court of Kings Bench on the Sixth day of October, One Thousand Eight Hundred and Thirty Seven after the publication and notice required by Law at which Austin Cuvillier, Esq., one of the Justices assigned to keep the peace in and for the said District, appointed by the said Honorable George Pyke, Esquire, to preside at the said meeting did then there proceed to the election of five persons as Trustees that is to say:-

Moses Judah Hays, of Montreal, Esquire,
Isaac Valentine, of Montreal, Esquire,
Aaron H. Hart, of Montreal, Merchant,
Jacob H. Joseph, of Montreal, Merchant,
Aaron H. David, of Montreal, Physician.

As appears by the return of proceedings of the said meeting to us made by the said Austin Cuvillier, Esquire.

And further, we certify that afterwards, to wit, on the thirty-first day of July, One Thousand eight Hundred and forty, at the said City of Montreal, at another meeting of the persons so registered the following persons were elected Trustees in lieu of Benjamin Hart and A.H. David, M.D., Esquires, absentees, who with the three on the other side named are still in office, as appeared by the return of Isaac Valentine Esquire, the oldest Trustee who presided at the said meetint to us made, to wit:-

Samuel Hort of Montreal, Merchant,
Theodore Hart of Montreal, Merchant

And we further certify that David Pisa, has duly enregistered his name, age and profession minister in our Register, as by Law required.

GIVEN UNDER OUR HAND AND SEAL THIS TWENTY SECOND DAY OF DECEMBER, ONE THOUSAND EIGHT HUNDRED AND FORTY.

PROVINCE OF LOWER CANADA.

HIS EXCELLENCY THE RIGHT HONOURABLE CHARLES BAGOT SYDENHAM OF SYDENHAM IN THE COUNTY OF KENT AND OF TORONTO IN CANADA, GOVERNOR GENERAL OF BRITISH NORTH AMERICA AND CAPTAIN GENERAL AND GOVERNOR IN CHIEF IN AND OVER THE PROVINCE OF LOWER CANADA AND UPPER CANADA, NOVA SCOTIA, AND THE ISLAND OF PRINCE EDWARD AND VICE ADMIRAL OF THE SAME.

SIGNED:- SYDENHAM.

To the Judges and Justices Officers and Ministers of Justice and all others whom it may concern in the said Province, Greeting:-

Whereas David Pisa of the City of Montreal in the District of Montreal in the said Province, Minister of the Jewish Religion acting as such in the said District of Montreal hath by his petition submitted by the Chairman and Trustees chosen and appointed under and by virtue of the act of the Legislature of the said Province passed in the Tenth and Eleventh year of the Reign of His late Majesty King George IV entitled, " An Act to extend certain privileges therein mentioned to persons professing the Jewish Religion and for the obviating certain inconveniences to which others of His Majesty's subjects might otherwise be exposed" prayed that I would grant him my Licence under my hand and seal authorising and approving him the said David Pisa to have and keep Register of all births, marriages, and burials, within the said District of Montreal to be recorded or performed by him as such, Minister according to the Laws of the said Province and the said Act of the Legislature above mentioned,

And whereas it seems fit that the prayer of the said petition should be granted, Know Ye that I, the said Charles Bagot Sydenham of Sydenham, do by these presents in virtue of the power in me vested by the above mentioned act of the Legislature of the said Province licence and authorise the said David Pisa being such Minister as afore-said to have and to keep Register of births, marriages and burials within the said District of Montreal, conformably to the provisions and requirements of the said Act above mentioned and according to other Statutes and Laws of the said Province.

GIVEN UNDER MY HAND AND SEAL AT ARMS AT THE GOVERNMENT HOUSE IN THE CITY OF

MONTREAL IN THE SAID PROVINCE OF LOWER CANADA, THE TWENTY FIFTH DAY OF JANUARY IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FORTY ONE AND IN THE FOURTH YEAR OF HER MAJESTY'S REIGN.

BY HIS EXCELLENCY'S COMMAND,

SIGNED:-

D. DALY,

Secretary.

Indorsed, Instrument under the seal at Arms granting a Licence to David Pisa, Minister of the Jewish Religion to keep Register ----

Pial

Recorded in the Register's office of the Records at Quebec the 27th day of January, 1841, in the sixteenth register of Letters, Patent and Commissions....Etc.

SIGNED,

D. Daly,

Sec. & Register.

PROVINCE OF CANADA - DISTRICT OF MONTREAL.

To the Honorable, the Chief Justice and the Justices of the Honorable the Court of Kings Bench, for the District of Montreal.

The Petition of Isaac Valentine, Theodore Hart, Samuel Benjamin, Aaron P. Hart, Samuel Hort, Henry Solomons, and Adam S.Solomon all persons professing the Jewish Faith in the City of Montreal,

Humbly Sheweth:-

That under and by virtue of an order made by the Honorable George Pyke Esquire, on the sixth day of September, One Thousand Eight Hundred and Thirty seven, a public meeting of persons professng the Jewish Faith and whose names were inscribed on the Register kept for that purpose by the Prothonotary of the Court of Kings Bench in conformity to the statute in that case made and provided was held at the Court House in this City on the tehth day of October, One thousand eight hundred and thirty seven at which meeting five persons to wit, Isaac Valentine, Moses Judah Hays, Benjamin Hart, Jacob H. Joseph and Aaron H. David all of Montreal were by a majority of voters duly elected Trustees of the Jewish Congregation for the purposes of the said Statute.

That afterwards to wit upon the fourteenth day of June, one thousand eight hundred and forty upon the Petition of Benjamin Hart, Theodore Hart, M J. Hayes, Isaac Valentine, J.H. Joseph, Samuel Hort and Jesse Joseph, two persons were elected to serve as trustees namely, Samuel Hort and Theodore Hart, upon the order of the Honorabel Samuel Gale, one of the Judges of the said Court convening the meeting by Law required and at such meeting and at a subsequent meeting the said Samuel Hort was elected Secretary. That by the said Statute it was expressly enacted that no trustee shall remain in office longer than five years. That five years having now nearly elapsed it has become necessary to name other persons to act as Trustees as aforesaid for five years ti be computed from the tenth day of October now next, Wherefore your Petitioners pray that Your Honors or one of your Honors will be pleased to convene a public meeting of persons so registered as aforesaid in the district of Montreal at such time and place as Your Honors may appoint for the purposes aforesaid and youwill do justice.

Montreal, 31st, of August, 1842.

SIGNED:-

J. Valentine,
H. Solomons,

T. Hart,

S. Benjamin,

Samuel Hart, Sect.

A.H. Hart,

A.S. Solomons.

DISTRICT OF MONTREAL.

By virtue of the Provincial Statute in this behalf made andprovided , I do order that a Public meeting of persons professing the Jewish Faith and whose names are inscribed inthe in the Register keptby the Prothonotary of the Court of Kings Bench for this district in conformity to the said Statute be held at the Trustee Room in the Jewish Synagogue in the City of Montreal on Monday the third day of October next at the hour of three of the clock in the afternoon then and there to proceed to the election of Trustees as directed by the said act for the several purposes therein mentioned and I do further order that Alexander Buchanan, Esquire, do preside at the said meeting and that he do return the proceedings thereof into the office of the prothonotary of the said Court of the Kings Bench for the said district of Montreal there to remain of record and further that the present order be inserted during two weeks in the Montreal Gazette, published in this City.

Given under my hand at the City of Montreal this second day of September in the year of Our Lord, One Thousand Eight Hundred and Forty Two and in the sixth year of her Majesty's reign.

SIGNED:-

Valliere de S. Real.

Ch. J.

PROVINCE OF CANADA DISTRICT OF MONTREAL

To the Honorable the Chief Justice and the Justices of Her Majesty's Court, of Kings Bench, of and for the District of Montreal.-

The Petition of the undersigned , residents in the City of Montreal and professing the Jewish Faith:-

Respectfully Sheweth:-

That your Petitioners are seven of the number whose names are registered in the Register kept bythe Prothonotary of this District as required by the Act of 9 and 10th George IV Entitled, "An Act to extend certain pricileges therein mentioned to persons professing the Jewish Faith and for the obviating certain inconveniences to which other of His Majesty's Subjects might be exposed."

That the period has expired for which the Trustees named at the last Public meeting were to serve and no meeting having been by them legally convened, there are at present no Trustees to represent persons professing the Jewish Faith in this City.

That it is essential that a public Meeting of persons professing the Jewish Faith be convened as soon as possible for the purpose of electing five persons to serve as Trustees.

Therefore Your Petitioners pray that your Honor or oneof your Honors will be pleased to convene a public meeting of all persons professing the Jewish Faith and registered in this District of Montreal be held in the City of Montreal at such place therein and at such time as your Honor or one of your Honors may deem it advisable to appoint and that Your Honor or one of Your Honors may be pleased to name some Justice of the Peace for the said District to preside at such meeting and to make his return of the proceedings thereat to the Prothonotarie's of the Court of Kings Bench of this District and you will do justice.

And Your Petitioners as in duty bound will ever..... .....etc..

Montreal, November 25th, 1842.

SIGNED, W. Samuel David, Isaac Valentine,

I.H. Joseph, Theodore Hart,

A.R. Hart W.M. Binley,

B. Hart.

At a meeting of Registered Members of persons professing the Jewish persuasion, held at the Synagogue this ay at 11 A.M., in accordance with an order of the Chief Justice of Montreal, the Honorable A. Couvillier in the chair, Mr. E.H. Joseph acting as Secretary there were present,

Henry Solomon,	E. Hart,	T. Hessing,
A. Benjamin,	Theodore Hart,	Jesse Joseph,
Sam Hyman,	Saml Benjamin,	Saml Moses (?)
M.S. David,	Isaac Aarons,	A.M. Lyons,
J.W. Joseph,	Joseph Joseph	
Lewis Lyons	A. Prince,	

The Chairman opened the meeting by informing them that he had been ordered to preside at the election of five trustees and directed them to proceed with the election accordingly when the following gentlemen were unanimously chosen as Trustees,

Henry Solomon, Merchant,

Benjamin Hart, "

E.J. Joseph, "

M. Samuel David, advocate,

Samuel Benjamin Merchant

The meeting adjourned.

Signed,

Austin Cuvillier, I.P.

J.H. Joseph, Secretary.

DISTRICT OF MONTREAL TO WIT:-

To the Honorable, the Chief Justice and Justices of the Court of Kings Bendh for the District of Montreal.

The Petition of the undersigned duly registered members of the Jewish persuasion, resi residing in the said district of Montreal,

Respectfully Sheweth:-

That Benjamin Hart, Esquire, of the City of Montreal, one of the Trustees of the Jewish persuasion elected at a meeting of the members of the said persuasion held under and by virtue of the statute in such case provided has resigned his said office of the Trustee aforesaid, and that it becomes necessary to call a meeting according to

the requirements of the Law of the members or persons professing the said religion registered in the said District for the purpose of supplying the said vacancy.

Therefore, Your Petitioners pmay, that your Honors or one of your Honors will be pleased to convene a public meeting of all persons registered according to the requirement of the Statute in such case made and provided to be held in the City of Montreal at such time and place therein as your Honors or one of your Honors shall deem it advisable for the purpose of appointing a Trustee in the place and stead of the said Benjamin Hart, Esquire, resigned .

Montreal June 7thp 1843

Signed:- Jesse Joseph,
Samuel David,
G. Joseph,
M. Solomon
I. Benjamin,
William Benjamin.

DISTRICT OF MONTREAL TO WIT:-

Let a public meeting of all persons professing the Jewish religion and being duly registered as required by the said Statute be convened for the purpose of appointing a Trustee as above prayed for and let the said meeting be held at the Jewish Synagogue in the City of Montreal on the tenth day of July next and the hour of ten in the forenoon of that day and let due notice of such meeting be given by inserting the same during two weekd in the Montreal Gazette, published in the City of Montreal.

Montreal, June 7th, 1843.

Signed:- Valliers de St. Real, Chief Justice.

DISTRICT OF MONTREAL

IN THE KINGS BENCH IN CHAMBERS.

Present:-

The Honorable I.R. Volliers de St. Real, Chief Justice, Exparte, on petition of the Jewish Persuasion residing in the said district of Montreal.

It is ordered that a Public meeting of all persons professing the Jewish Religion and being duly registered as required by the statute in such case provided, be convendd for the purpose of appointing one Trustee as prayed for and let the said meeting be held at the Jewish Synagogue in the City of Montreal on the tenth day of July next, at the hour of ten of the clock in the forenoon of that day and let due notice of the said meeting be given by inserting the same during two weeks in the Montreal Gazette published in the said City of Montreal.

By Order.

Signed:- Mond & Morrogh, PKB.

Montreal, July 10th, 1843

At a meeting of persons professing the Jewish religion duly registered held in the Synagogue this day in accordance with an order of the Chief Justice of Montreal.

Present:- Mr. H. Solomon in the chair and I.H. Joseph acted as Secretary.

Henry Solomon,

Samuel Benjamin,

H. Binley,

I.H. Joseph,

Jesse Joseph,

The Chairman stated the object of the meeting to be the election of a Trustee in the place of one resigned. When Mr. Myer Solomon was chosen by a majority of votes, and the meeting adjourned.

Signed, H. Solomon,

J.H. Joseph, Sec.

PROVINCE OF CANADA DISTRICT OF MONTREAL

To the Honorable the Chief Justice and Justices of the Superior Court in and for Lower Canada:-

The Petition of the undersigned duly registered persons professing the Jewish Religion, residing in the City of Montreal,

Respectfully Sheweth:-

hat under and by virtue of the act of the Parliament of Lower Canada, 9th George 1 V hapter 75 there were duly elected on the fifth day of January one thousand Eight ndred and forty three five persons as Trustees for the purposes of the said act mely Henry Solomon, Merchant, Benjamin Hart, Merchant, Jacob H. Joseph, Merchant , Samuel David, Advocate, and Samuel Benjamin, Merchant, and afterwards on the tenth ay of July One Thousand Eight Hundred and Forth Three in Consequence of the resignation f the said Benjamin Hart one of the said Trustees another was elected in his stead, mely Myer Solomon.

hat since the last mentioned date there hath been no election of Trustees, and inas- uch as by the sixth section of the said act is is provided that no Trustee shall main in Office longer than five years it becomes necessary for the purposes of the aid Act that a Public Meeting should be convened as prescribed by Law for the election f five persons from amongst those enregistered under the aforesaid Act.

herefore your Petitioners pray that your Honors or one of Your Honors will be pleased o convene a Public Meeting of all persons enregistered according to the requirements of he said Act to be held in the City of Montreal at such time and place as your lonors or one of Your Honors shall deem it advisable to elect five Trustees for the urposes of the said act.

ontreal, January 21st, 1850

Signed:-

William Benjamin,

John Levey,

Goodman Benjamin

Edward Moss

David Moss

Alexander Levy,

Gottschalk I. Asher

DISTRICT OF MONTREAL TO WIT:-

Let a Public Meeting of all persons professing the Jewish Religion and being duly registered as required by the said statute be convened for the purpose of appointing five Trustees as prayed for and let the said meeting be held at the Jewish Synagogue in the City of Montreal on the Twenty fifth day of February next at the hour of ten of the clock in the forenoon and let due notice of such meetings be given by inserting the same during two weeks in the Montreal Herald, a newspaper published in the

SUMMARY OF THE RECORD

A Petition of Louis Aronson, Hiram Cohen, Alexander H. Halperein, Louis Lazarus, Michael Lightstone, Hiram Rutenberg, and Nathan Goldstein, City of Montreal.

Dated, Aug. 2nd, 1859.

Reciting the Act of George IV Chapter 75 , and stating that the Petitioners are seven of the number edregistered in pursuance of the said act and aredesirous of establishing a Jewish Congregation of Synagogue in the District of Montreal and of availing themselves of the other advantages of the said act and asking for the convening of a Public Meeting of all persons so enregistered in this district and the appointment of some Justice of the Peace to make a return of the proceedings and to preside at such meeting.

Judgement of S. P agnuela , Judge of the Supreme Court, in regard to the exparte application above mentioned. (See reported case.)

Petition dated 21st September 1859, by the above petitioners reciting the act of George IV Chapter 75, also stating that the Superior Court replaces and aking for a meeting of persons registered and Justice of Peace to preside. the Court of King's Bench for this purpose . Recites "That in Pursuance of said Act, such Trustees were duly elected until the 25th of February 18550 as appeared by said register since when no election has been held. That the last Trustees so elected were Messrs. Goodman Benjamin, John Levey, Aaron Hart David, who are all deceased and Simon Hart and Alexander Levey who are both domiciled and residing out of the district of Montreal and Dominion of Canada and have long left the limits thereof. "
Recitesthat the Petitioners are seven of the Jews so registered and are desirous of having an election of Trustees under the provisions of said Act and asks for a Meeting of all persons so enregistered. etc..

Affadavit of Louis Aronson , deposing that the above mentioned persons have domiliced out of the District of Montreal are dead, or left the limits .. etc. Dated, 3rd, September 1859

Order of S. Bagueuela, P.S.C. Dated, 25th of September 1859, reciting the above mentioned petition and mentioning that more than five years have elapsed since Trustees were elected under said Statute., orders that all persons professing the Jewish Religion duly enregistered as required by the said Statute, be convened for the purpose of appointing five Trustees pursuant to said Statute, to meet on the 29th of October, 1859 and considering that all

the Trustees elected last election are dead or have left the limits of the District appoints William Francis Lighthall, Justice of the Peach to preside at said meeting....etc.

Report of Fred.William Lighthall, J.P. Dated 29th October 1859 recites order of 25th of September 1859 the convening of the Public Meeting on Tuesday 29th of October 1859 ..etc.. reports that nominations were called for , Messrs Lighthall and McDonald, Advocates, appearing for the Petitioners. Messrs. LaFleurre and Rielle,(?) advocates appearing for the Congregation of Portuguese Jews. Reports that a protest marked Exhibit "A" hereto annexed, was produced by Louis A Hart, under protest and objection of the Petitions, Upon motion of Jesse Joseph, seconded by Moses Vineberg, the following were nominated, David S. Friedman, Bernard Goldstein Louis A. Hart, Gershom Joseph, and Harris Vineberg for election as such Five Trustees

Petitioners protested against said nomination as appears by protest herewith marked Exhibit "B" and in amendment were nominated for election as such five Trustees, L. Aronson, Lee Harris Lebensky, Hiram Rutenberg, N. Forcimer, and Louis Lazarus, Messrs, Belle, and Lafleure protest against such nominations. Twenty three voted for the original motion and fifteen for the amendment (those who voted for the original consisted, it seems, of the Spanish Portugues and Shaar Hashomayim groups) In view of theprotest, this matter was referred to the Honorable Judge Pagnuella for instruction thereon.

Hiram Rutenberg, and Louis Aronson , two of the Petitioners through their attorneys protests on the 29th od October 1859 against the voting and interference in the proceeding of the said twenty three voters on the grounds that each and all of the said persons is and are members of a certain congregation of Jews worshipping in a district of Montreal generally known as the Congregation of Portuguese Jews and as such have no right to so vote nor take part in the subsequent proceedings for the reasons hereinafter mentioned. And also protests against otheres who are members of teh congregation of German Polish Jews. Recites that bogh of the said Congregations are constituted under special charter by 9 Victoria Chapter 96." And are by said act excepted togethere with each and all of the members of the same from the duties and the rights in operation of the Statute 9 & 10 George IV and therefore have no right to so vote or take part, Fusthermore, most of said persons are signers of a protest filed by them at this meeting in which they alledged themselves members of said congregations and also have cast their votes there, at, for a ticket for of pretended Trustees who avowedly do and intend to act as such." "The said protesters claim that the other voters at the meeting are qualified and protest against such

interference that their rights and ask for damages, costs and loss and ask for a report of the Justice of the Peace accordingly.

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of Protest
Notice/Dated 29th October 1889 To William Francis Lighthall appointed to preside at meeting called by Pagnuella, 25th September 1889 and signed by Benjamin Hart, Clarence I. DeSola, Moses Vineberg.. et al... stating that they are members of duly incorporated Jewish Congregations of Montreal and protesting of the holding of said Meeting and the election of the said Trustees for the following, among other reasons.

1. Because thesaid Act contemplated and provided for the formations only of one Jewish congregation in and for the district of Montreal and the provisions it contained for Colling together all persons professing the Jewish Religion for the purpose of electing one single board of five Trustees to represent the Jewish Community of Montrdal and to govern their congregational affairs became insufficient and inapplicable the moment that the Jewish Community of Montreal became divided up into more than one religious congregation.

2. Because the Jews in Montreal have long since become divided up into more than one religious congregation, two congregations respectively, called the "Corporation of the Portuguese Jews of Montreal" and the "Corporation of the German and Polish Jews of Montreal" having been incorporated by the act of 9 Victoria Chapter 96 and a third religious congregation called the "Temple Emanuel" having been incorporated by the act of 44 Victoria, Chapter 67. And of which congregation are still in existence and the said acts incorporating them provide for the election of a separate board of Trusteesfor each of the said congregations from among the respective members thereof.

3. Because the said act 9 Vic. Chapter 96 incorporating the Congregations of the Portuguese Jews of Montreal and the German and Polish Jews of Montreal (into which the Jewish Community of Montreal was then divided) expressly declared the provisions of the act 9 and 10 George IV Chap. 75 to be insufficient for the purposes for which it was intended and repealed so much of the said act and of any other act or law as might with be inconsistent with the provisions of the said act and of any other act of law as might with be in consistent with the provisions of the said new act (9 Vict, Chap 96) among which inconsistent enactments were the old provisions for the election of one single board of Trustees to

administer and manage the congregational affairs of the whole Jewish Community

4. Because the aforesaid three incorporated congregations of Montreal Jews have each of them vested interests and sights that will be interfered with and impringed upon by any attempt to elect and create under the abbsolete and repealed provisions of the said act of Geo.IV a board of Trustees having or that might claim to have the powers and authorities hereby conferred upon the trusteesthat were elected thereunder while the said act was still in full form in the District of Montreal."

And makes notice of protest reserving legal rights.

Signed by,

Benjamin Hart,	Lewis A. Hart,
O. Solomon,	Aaron DeSola
L. Kellert,	Henry Benjamin,
J.L. Samuel	Horace Joseph
J. Schenman	Gershom De Sola
Ismael Reubenstein	Clarence de Sola
I. Greenberg	S. Myers,
Jesse Joseph,	L. Davis,
D.S. Friedman	Gershom Josephp
Harris Vineberg,	J.H. Joseph,
Moses Vineberg,	L. Hart,

L. ARONSON & ALL

REQUERANTS

Nous soussigne juge de la Cour Superieure pour le Bas Canada, a nous fait par William Francis Lighthall ecuier Juge de Paixpour le District de Montreal Vu le Rapport des procedes qui one eu lieu sous sa presidence a l'assemblee tenu le 29 octobre dernier par les Juifs inscrits au District de Montreal pour l'election de cinq syndics conformement a notre ordonnance du 2 september mil huit cent quatre vingt neuf et ont les protets par lui produits avec son dit Rapport.

Considerent que les Juifs inscrits qui forment partie de la Corporation des Juifs Portugais et a la Corporation des Juifs Allemands et Polonais de Montreal en vertu de l'acte 9 Vict Chapter 96 ne sont plus sous le controle des syndics elus en vertu de L'Acte 9 and 10 Georges IV Chapter 75 ne pouvent voter a l'election de ces derniers syndics vu qu'ils forment des corporations separées et ont pour les regir des syndics élus par eux seuls, ordonnons au dit William Francis Lighthall esdrière de declarer élus Syndics en vertu du dit acte 9 and 10 George IV Chapter 75 qui ont eu la majorite des votes a la site assemblée en eleminant les juifs appartenant a la dite corporation de Juifs Portugais de Montreal et a la corporation des Juifs allemandes et Polonais de Montreal, Savoir ceux qui one signe le protet de 29 Octobre dernier 1889 et qui sont Benamin Hart, Lewis A.Hart, L.Kellert, HenryBenjamin, C.Solomon Aaron de Sola, .I.Gershorn de Sola, Israel Reubenstein, Clarence J.de Sola J.Greenberg, .Myers, J.Joseph, D.S.Friedman, Gershorn Joseph, Harris Vineberg, J.H. oseph, Moses Vineberg, L.Hart.

one a Montreal a 15 November, 1889.

Signé A. Pagnuelle J.S.C.

SUPERIOR COURT
DISTRICT OF MONTREAL EX PARTE

L. ARONSON ET AL

PETITIONERS.

Having seen the Judgment of the Honorable Pagnuels, Judge of the Superior Court for Lower Canada, Dated at Montreal the 15th day of November, 1889, on my preliminary report to him for instructions such judgement directing me to declare elected as trustees under the act 9th and 10th George IV Chapter 75, those who have the majority of votes at the meeting held under by presidency on the 29th day of October, last by Registered Jews of the District of Montreal for the election of five

Trustees according to the order of the said Honorable Judge of the 2nd day of September last bb eleminating for the reasons therein set forth the Jews belonging to the Corporation of Portutuese Jews of Montreal and to the corporation of German and Polish Jews of Montreal, as being incorporated under the act 9th vic chapter 96 and who ad signed the protest of the 29th of October last being Benjamin Hart, Lewis H. Hard and 20 others named in said said judgement.

I , the undersigned , William Francis Lighthall, Esquire as such justice of the Peace for the Distfict of Montreal as President at each meeting now acting in accordance with said judgment of the 19th November 1859 having made such elimination find that Louis Aronson and Harris Luberskey Hiram Rutenberg Nathan Forsmer and Levi Lazarus had the majority of votes and are declared by me as duly elected as uch five Trustees under the act 9th and 10th George IV Chapter 75 and I make return thereof to the Prothonotary of said superior Court at Montreal as required by the order of my appointment.

Given under my hand at Montreal this 19th day of November A.D. 1859

Signed:- W.F. Lighthall, J.P.

DISTRICT OF MONTREAL

CORRESPONDENCE RESPECTING ACT OF 1829---GIVING A REGISTER OF CIVIL STATUS TO THE JEWS OF LOWER CANADA.

Downing Street,
24th August 1833

Sir,

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 circumstance 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.

I have the honor to be, Sir,
Your most obedient and humble servant,
Jas. Stephen

R. W. HAY, Esq.

Downing Street,
28th August 1833

Lieut-Gen'l
The Lord Aylmer, KCB

My Lord:

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.

I have the honor to be, My Lord,

Your Lordship's most obedient servant,

E. G. STANLEY

Endorsed on Back

Received Sorel 23 October 1833

Civil Secretary,

Communicate officially with the Attorney-General as to the course which it may be necessary to adopt in communicating this subject to the Legislature.

Report of a Special Committee to whom was referred Message of His Excellency the Governor-in-Chief, of the 8th February, 1834. In appendix G.G. Journals of Legislative Council, House of Assembly.

The Committee reported:-

"That by the Common Law of England, a lawful oath is a solemn affirmation made by one who believes in the existence of God and 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 always been 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 of Justices of the Peace's in Lower Canada must be required either by the Criminal Law of England as introduced by the Statute of the Imperial Parliament, 14, George III, chapter 83, or by some Statute either of the Imperial Parliament/or of the Provincial Legislature requiring this form of qualification.

Generally speaking qualifications of Justices of the Peace, as settled by various English Statutes are not applicable to the condition of the Province, nor have they ever obtained therein -- although the general body of the Criminal Law of England was

introduced into the Province by 14 George III. Those provisions which have no just application cannot be considered as forming a 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 George III as the other qualifications required by the same laws as to landed property, 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, etc. as other persons qualifying for office. Upon the introduction of the Criminal Law of England into this Province, the Law in regard to qualifications of Justices in England came to be in force, and it is 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 consideration of the British Statutes regarding Jews and their holding office in the Colonies."

By Statute 13 George II, chapter 7 for naturalizing. .....(1)

Under this Statute, Jews naturalized as well as natural born could hold office within the Colonies. The 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

1. see Appendix p. 240

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 of 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 office 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 first recited Statute are general, yet as they don't 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 religous 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 George III, Chapter 25, was passed .....(/)

1. See Appendix p. 246

The word "declare" used in this Statute is decisive and on the highest authority. The Act quoad, this is a declaratory Act, by competent authority, for cujus est condire 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 the law the effect of disqualifying a person who could not use these words, and who was otherwise qualified to hold office in the Colonies. 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 on the same footing as their Protestant brethren".

The report refers to Provincial Statute, 10 and 11, George 1V, chapter 2, in regard to the qualification of a Justice of the Peace, which contains no provision which can prevent a person professing the Jewish religion from qualifying as a Justice of the Peace "nothwithstanding that it would seem from what is said above, the 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 1 William 1V, chapter 57 was passed" ----------(/).

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 terms 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.

1. see fo 40

So too, where two Statutes in pari materis, contain provisions which appear to be inconsistent, they shall be construed in such a way as that the provisions of both may, if possible, be carried into effect. A just inference from these principles, is that if the oath of abjuration be necessary for a Jew to enable him to have that power which the Statute conferred on him, it might 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 by a faith not his, there ceases to be any oath whatsoever and from a too minute and verbal adherance 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 William IV, chapter 5, have not been questioned by any competent authority.

"Your Committee have 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 subject referred to therein.

R. J. KIMBER

February 28, 1834. Chairman

CORRESPONDENCE referred to in the Evidence of Mr. S. B. Hart of Three Rivers before the Special Committee, in appendix G. G. Journals of House of Assembly 1834, Lower Canada.

#1

Office of the Peace,
Three Rivers, 29th July, 1833.

Sir,

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 1V, chapter 2, for the qualification of Justices of the Peace, and it becomes my duty to inquire, 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 111, chapter 6, Section 34.

Your answer is necessary and will oblige, Sir,
Your very obedient humble Servant,
(signed) David Chisholme
Clerk of the Peace.

to Samuel B. Hart, Esquire,
Three Rivers

(True copy)

Sam. B. Hart.

#2

Office of the Peace,
Three Rivers, 3rd August, 1833.

Sir,

Having been favoured with no answer to my official letter to you, of the 29th ultimo, delivered to you personally in the forenoon in the same day, inquiring if it was your intention to qualify and act as Justice of

#2

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.

I have the honor to be, Sir,
Your very obedient Servant,
(signed) D. Chisholme,"
Clerk of the Peace

To S. B. Hart, Esquire,
Three Rivers
(True copy)
Sam. B. Hart

#3 Three Rivers, 3rd August, 1833

Sir,

I have the honor to acknowledge the receipt of your letter bearing date the 29th ultimo, and beg to state that the provisions contained in the Provincial Statute 10th and 11th George 1V, Chapter 2, to which you have considered it nedessary to refer.

I have the honor to be, Sir,
Your very obedient Servant,
(signed) Sam B. Hart.

To D. Chisholme, Esq.
Clerk of the Peace
(True copy)
S. B. Hart

Three Rivers, Saturday Evening,
Half past 7 o'clock, P.M.
3rd August, 1833.

#4

Sir,

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 any 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 as 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.

I have the honor to be, Sir,
Your very obedient servant,
(signed) David Chisholme
Clerk of the Peace

to S. B. Hart Esq.
Three Rivers,

(true copy)
S. B. Hart

#5

Three Rivers, Saturday Evening,
3rd August, 1833

Sir,

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

Your obedient Servant,
(signed) Sam B. Hart

To D. Chisholme, Esq.
Clerk of the Peace,
(true copy)
S. B. Hart

#6

Three Rivers, 7th August 1833

Sir,

I have the honor to communicate to you, for the information of His Excellency the Governor-in-Chief, a copy of a correspondence which has lately taken place between Mr. David Chisholme, Clerk of the Peace for this District, and myself, upon the oft repeated subject of my inadmissibility, as a person possessing the Jewish faith, to receive the oaths of office, which are considered as necessary to be taken previous to my administering the duties which are attendant upon the situation of a Justice of the Peace.

#6

The circumstance of its having been so authoritatively stated, that it was at the command of His Excellency, that the letter was addressed to me, has induced me to put him in possession of my answer to that letter, by which he will observe, that I intimated to Mr. Chisholme my intention of acceding to the solitary request, made to me in his letter of the 29th ultimo, "that I should conform to the provisions contained in the Provincial Statute 10th and 11th, George IV, Chapter 3, but, nevertheless, as I am far from being desirous at the present moment, that his Excellency should draw an unfavorable inference from those words, "that I do not purpose qualifying myself in all other respects" I now wish him distincly to understand, that it is my intention to qualify myself according to the established Laws of this Country, those Laws having made it optional with me, whether I will or will not do so, during the definite period of six months.

I cannot conclude without expressing my great surprise, that His Excellency should have inconsideratey allowed his name to be introduced into this correspondence, and should have suffered an individual, who has effected such irremediable mischief in this Colony, to cower under the shield of His Excellency's confidence,

I have the honor to be, Sir,
Your obedient humble servant,
(signed) Samuel Becancour Hart

To Lieut-Col. Craig,
Civil Secretary,
(true copy)
S. B. Hart.

#7

Office of the Peace

Three Rivers, 26th August 1833

Sir,

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 should 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

I have the honor to be, Sir,
Your very obedient Servant,
(signed) David Chisholme
Clerk of the Peace

to S. B.Hart, Esq.
(true copy)
S. B. Hart

#8

Three Rivers, 28 August 1833

Sir,

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

I am Sir,
Your obedient Servant,
(signed) S. B. Hart

to David Chisholme Esq.
Clerk of the Peace
(true copy)
S. B. Hart

#9 Office of the Peace,

Three Rivers, 29th August 1833

Mr. Chisholme, Clerk of Peace, asks Mr. Hart for certificate of "having taken and subscribed all the oaths required by Law, under the hand of the officer who may have administered these oaths to you".

#10 Three Rivers, 30th August 1833

Letter of Sam B. Hart to Chisholme.

#11 Three Rivers, 2 September 1833

S. B. Hart to D. Chisholme, enclosing certificate.

#12 September 2, 1833

Chisholme acknowledges same for transmission to His Excellency, Governor-in-Chief.

#13

Province of Lower Canada)
District of Three Rivers)

I hereby certify that Samuel B. Hart, Esquire, did on Wednesday, the 28th day of August, 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 so conformably to the Laws of the said Province of Lower Canada.

Dated at Three Rivers, this
20th day of September, 1833
(signed)"Joseph Badeaux"
Commissioner per Dedim potestatem

(true copy)
S. B. Hart

#14

Three Rivers,
13th October 1833.

Sir,

Having heard from a source upon which every reliance can be placed, that you had been pleased to associate your name as Attorney General, with 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; I must confess that I was somewhat grieved when it came to my knowledge that you had written a letter to Mr. Moses Hayes and Mr. Benjamin Hart, intimating to them, the wish of His Excellency the Governor-in-Chief, that they should decline accepting the situation of Magistrate after you had advised the Government to include them in the C. of the Peace, and that in accordance with your views, these gentlemen were requested by you to have an opinion framed, which cannot but be considered as averse to their own interest and prejudicial to the rights of Members of the Jewish persuasion residing in this Country. With every desire that you should avail yourself of an opportunity that is now afforded to justify your conduct upon that occasion, which I conceive was not generous,

I remain,

Your obedient Servant,

(signed) Sam B. Hart

To C. R. Ogden, Esq.,
Attorney-General &c,
Quebec

(true copy)
S. B. Hart

#15 Legal opinion of A. P. Hart.

St. Gabriel Street, Montreal,
Friday morning, 31 May 1833

Gentlemen:

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 the existing laws in force in this Province, I beg to state, that having duly considered the question, I am clearly of the opinion,--

1stly That the 1st William IV, Chapter 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.

2ndly That the Statute of the 10, George 1, Chapter 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.

3rdly That the Statute 13, George II, commonly called the Colonial Naturalization Act, refers in the omission of the above words only in cases of naturalization.

4thly That under existing circumstances I am decidedly 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.

I am, Gentlemen,

Your obedient Servant,

(signed) Aaron Philip Hart
Barrister at Law

To Benj. Hart &
Moses J. Hayes, Esqs.

#16 3rd June, 1833

Sir,

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 acceptance of the Office tendered to us by His Excellency, we have in consequence of of doubts 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, William 4, Chapter 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 acknowledgment 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

#16

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.

We have the honor to be, &c., &c.,

Benjamin Hart,
M. J. Hays

to Lieut. Col. Craig
Civil Secretary
Quebec.

Note.. From The Jew in Canada - Sack - pp. 37.

#17

Castle of St. Lewis,
Quebec, 10th June, 1833

Gentlemen:

Having submitted to His Excellency the Governor-in-Chief, your letter of the third 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.

I have the honor to be, Gentlemen,
Your obedient Servant,
(signed) H. Craig
Secretary

To Benjamin Hart &
Moses J. Hays, esqs.

A true copy
H. Craig
Civil Secretary.

PRESENTMENT OF GRAND JURY OF THREE RIVERS RESPECTING RIGHT OF OF JEWS TO BE JUSTICES OF THE PEACE.

District des Trois-Rivieres. Cour des Sessions Generales de Quartier de la paix.

Terme d'Avril 1834

Quartier, de la Paix, assemble,

Le Grand Jure de ce District dans leurs Sessions Generales, de ont appris avec surprise, que le nomme Samuel Becancour Hart, Ecuier, de la Ville des Trois Rivieres, sans avoir prete les Sermens, et souscrits la Declaration requis par les Statuts en force dans cette Province du Bas Canada, dans les six mois immediatement apres son appointement comme Juge de Paix dans ce dit District des Trois Rivieres ait persiste a sieger comme tel Juge de paix, apres les dits six mois expires et dans les presentes Sessions, nommement hier; en contravention des Status susdits, et de maniere a porter informalite dans les procedes de Justice, tels que pourvus par les Loix en force dans la dite Province du Bas-Canada.

Pourquoi le Grand Jure le concoit necessaire d'en faire la Representation et ils presentent a la Cour ici siegeante les circonstances, de maniere qu'elle puisse en porter tel remede qui sera, dans sa Sagesse juge necessaire.

Chambre des Grands Jures, Trois Rivieres, ce 22eme Jour d'Avril 1834.

(Signe) Joseph Craig,

foreman.

A True Copy
David Chisholme, N.P.

I translate:--

The Grand Jury of this District, in their General Quarter Sessions of the Peace assembled, have learned with surprise that one Samual Becancourt Hart, Esquire, of the City of Three Rivers, without having taken the Oaths and

subscribed the Declaration required by the Statute in force in this Province of Lower Canada, in the six months immediately after his appointment as Justice of the Peace in the said District of Three Rivers, has persisted in sitting as such Justice of the Peace, after the said six months had expired and in the present Sessions, that is to say, yesterday; in contravention of the said Statute, and so as thereby to bring informality into the course of justice, such as is prescribed by the Laws in force in the said Province of Lower Canada, Wherefore, the Grand Jury conceived it to be necessary to make a presentation thereof; and they present to the Court here sitting, the circumstances, in order that the proper remedy may be brought to bear as in the wisdom of the Court shall seem meet.

Grand Jury Room, Three River, the 22nd day of April, 1834.

(s'd) Joseph Craig,

Foreman.

CORRESPONDENCE RELATING TO JUTS AS SPECIAL COUNCILLORS, 1839-1840.

Liverpool
November 18, 1839.

My Lord

I am anxious to address you in your official situation as Her Majesty's principal Secretary for the Colonies, on a subject affecting the position of my respected Parent Benjamin Hart Esq. of Montreal; For many years past the intolerent spirit of the Lord Bishop of Quebec has served as a serious obstacle to the advancement of my Father to the Honorable offices and immunities enjoyed by his fellow citizens of Montreal on account of his Religious tenets alone on the occasion of the late rebellion in Lower Canada my Father as a Constitutionalsist, took his seat on the Bench as a Magistrate and dispensed Justice to the entire approval of our late excellent Governor Sir J. Colborne. The appointment of my Father to the Magistracy was firstly under the Government of Lord Aylmer and secondly under Lord Gosford who continued his name in the Commission of the peace, in which capacity he still takes share as a Magistrate of the District of Montreal, with the other Gentlemen connected with the Commission. However on the issuing of the list of Special Councillors for the Province of Lower Canada, I regretted to find an act of injustice to my Parent still continued from a spirit of intolerance, which the Law Officer of the Crown in whom is vested the power of recommending individuals as fit & proper persons for the Honble. Office of Responsible adviser of the Crown, has manifested by omitting to present my Fathers name for approval to the Governor in Chief.

I solely my Lord rest my Father's claim on the simple circumstances of his being one of the largest landed Proprietors in the two Canadas. An anglo Canadian by birth and a constant resident of Three Rivers and Montreal for fifty years. The oldest Merchant in Lower Canada, and one on whom the Inhabitants without reservation have ever entertained marked respect and attachment for as a Merchant he is known to the Right Honble, E. Ellice with whom his firm have transacted business with Mr. Ellice's late firm for many years, and all my family have ever been the strongest supporters of Government in that Colony, as an Israelite my Father has been debarred honors which I regret to say on looking over the list of Special Councillors of Lower Canada I find many who are not only ignorent Illiterate but who have not a stake in the Province in the possession of Landed property--or the necessary influence. I seek not my Lord to canvass the qualifications of the present Councillors, or is it my province to disaparage them. I beg however to convey to your Lordship that my worthy Parent's attainments fully would justify his elevation to the Council -- if the hitherto insuperable barrier of disqualification from Religious tenets could be overcome. I do therefore solicit as an earnest favor from your Lordship, that your Lordship in justice to my Father would cause enquiry to be made through the present Governor the Right Hon. C. F. Thompson as to the causes why my Father's services should have been so many years neglected. And Merchants and Barristers his junr by years and possessing but slight influence have been elevated by the late Governor in Chief to the Honorable situations I have named to his exclusion.

I feel satisfied from the knowledge I have of your Lordship's political character -- that your Lordship would not permit a slight to be offered to an old and respectable inhabitant of Montreal on the grounds of Religious disqualifications -- when services almost analogous to the duties of a Councillor have been rendered gratuitously , and received the approval of Her Majesty's Representative in the Canadas. I would if your Lordship would permit the liberty beseech your Lordship to forward this memorial to Canada in order to set at rest the misgivings entertained by my Friends of the repeated slight offered by the Attorney General of Lower Canada on the grounds of their Religious tenets. In presuming that the course I have now adopted in adressing your Lordship might lead to an enquiry, which myself and friends most earnestly seek. I trust your Lordship will attribute my anxiety merely to forward the cause of justice, as also to see my Father enjoy immunities and privileges which as a British subject in the Canadas and according to the Law of that Country he is entitled to if his qualifications are approved of.

I have &c,

(signed) ARTHUR WELLINGTON HART.

Toronto, 20th January, 1840.

The Lord John Russell,

My Lord,

I have the honour to acknowledge the receipt of Your Lordship's Despatch of the 24th November No. 32, enclosing a letter from Mr. A. W. Hart, complaining of the exclusion from the special Council of his father, Mr. Benjamin Hart, of Montreal. The complaint of Mr. Hart is evidently made under a misconception both of the nature of the office of Special Councillor, and of the qualifications or disqualifications attached to it.

The Bishop of Quebec died before the Special Council came into existence. If there were any person chargeable with illiberality for the exclusion of Mr. Hart from the Council, it must be Sir John Colborne himself; but as his son admits that Sir J. Colborne acted with great liberality towards his father in the matter of the Magistracy, he evidently does not intend to bring such a charge against that Officer. For my own part while I freely admit that his religious persuasion ought not to be a barrier to his admission to the special Council, I must at the same time consider that it gives him no claim independent of other considerations, to be admitted to that Body.

I have the honor to be Sir, &c.

C. Poulett Thomson

Toronto, 21 January, 1840.

Sir,

I am commanded by the Gov. Gen'l to acknowledge the receipt of your letter of the 23rd November last complaining of the exclusion from the Special Council of your father, Mr. Benjn Hart of Montreal. In reply I have to inform you that His Excellency has communicated with Lord John Russell on this subject in reference to the communication you addressed to His Lordship on the 18th of Nov. which was by him referred to the Governor General.

His Excellency desires me to state, that as appointments to the Special Council are the Act of the Governor alone, and as you yourself bear testimony to the liberality with which Sir John Colborne acted towards your father, His Excellency cannot assume that the omission of his name in the list of Special Councillors had any reference to his religious profession.

I have the honor to be Sir,

Your most obedient servant,

W. C. MURDOCK

A. W. HART ESQ.
Liverpool.

BILL

An Act respecting the publication of defamatory libel

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. This act may be cited as the *Publication of Defamatory Libel Act.*

2. The repeated publication of a defamatory libel, without legal justification or excuse, against any nationality, race or creed, likely to expose persons belonging to such nationality or race or professing such creed, to hatred, contempt or ridicule, shall give rise, without prejudice to any other recourse, in favour of any person belonging to such nationality or race or professing such creed, to the remedies hereinafter provided.

3. The word "publication" used in section 2 of this act shall be interpreted to mean any words legibly marked upon any substance whatever or any object signifying such matter otherwise than by words, exhibited in public or caused to be read or seen or shown or delivered with a view to its being read or seen by any person.

4. Any person belonging to such nationality or race or professing such creed may apply to a judge of the Superior Court in whose jurisdiction such libel is published or circulated for the issue of a writ of injunction, whether interim, interlocutory or final, to prevent the continuation of the publication of such libel or of any libel of a similar character.

5. Such writ may be directed and issued against any person, firm or corporation directly or indirectly responsible for the authorship or publication of such libel.

6. The provisions of Articles 959 to 972 of the Code of the Civil Procedure, both inclusive, shall apply to the proceedings taken under this act, save that, notwithstanding the provisions of Article 963, the judge to whom application is made for the granting of a writ of injunction may, in his discretion, relieve the petitioner from the obligation of furnishing security for costs and for the damages which may result from the issuing of such writ.

7. The present act shall come into force on the day of its sanction.

316.

BILL

An Act to amend the Code of Civil Procedure respecting diffamatory libel

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. Article 957 of the Code of Civil Procedure is amended:

a. By adding thereto, after sub-paragraph *b* of paragraph 1 thereof, the following sub-paragraph:

"*c.* Whenever any newspaper, publication, pamphlet or any printed matter whatsoever publishes, continuously or repeatedly, or whenever anyone distributes, writings or articles which, in the opinion of the judge, constitute an infringement of the provisions of the Criminal Code of Canada respecting diffamatory libel.";

b. By adding thereto, after sub-paragraph *b* of paragraph 2 thereof, the following sub-paragraph:

"*c.* In the cases provided for in sub-paragraph *c* of paragraph 1 of this article."

2. This act shall come into force on the day of its sanction.

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NO. 307

1st Session, 18th Legislature, 22 Geo. V, 1931-32

BILL.

An Act respecting the publication of defamatory libel

No. 167

1st Session, 18th Legislature, 22 Geo. V,
1931-32

BILL

An Act respecting the publication of defamatory libel

First Reading, ~~February, 1932~~ Jan 29/32

Second Reading. 4th February, 1932

~~referred to the~~ Committee on meeting 5/19 Feb.

MR. BERCOVITCH.

QUEBEC
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1932

No. 28

2nd Session, 18th Legislature, 23 Geo. V, 1933

BILL

An Act to amend the Code of Civil Procedure respecting diffamatory libel

First Reading, February, 1933

Second Reading, February, 1933

Hon. Mr. Taschereau.

QUEBEC
The Chronicle-Telegraph Pub. Co., Ltd.
—
1933

JUDGMENT OF JUDGE DESAULNIERS IN ABUGOV CASE, 1932.

In the petition before me, Abugov requests the Court to enjoin the Defendant to stop publishing in his three weekly journals, Le Miroir, Le Goglu, and Le Chameau, articles slandering in general the Jewish race to which he belongs, and, in particular maliciously libelling the plaintiff. In other words, he addresses himself to the tribunals, beseeching them to hold in leash the campaign which menaces the public peace and exposes the Jews--all Jews without distinction-- to the scorn and hatred of their fellow-citizens. A few days after the presentation of this petition the plaintiff instituted a principal action whereby he claimed from the defendant $500.00 in damages, and reiterated his request to have the aforementioned campaign suppressed. I have before me, therefore, a petition for an interlocutary injunction submitted in the course of a case. While hearing the pleas I demanded that the defendant abstain from writing against the Jewish race until final judgment had been rendered on the principal action. Not only did Defendant refuse, but I do not think I am mistaken, after reading documents on file, in saying that he added new virulence,--virulence which went so far as to bespatter the Court itself. I readily pardon the insults addressed to me personally, but I am surprised that defendant and his collaborators should have so forgotten the respect they owe to the magistrature. Judges are delegated by His Majesty, and rendering justice in his name, they represent him. Attacks on the dignity of the Bench, therefore, should be promptly and severely repressed.

I regret that Defendant did not see fit to follow my counsel. All citizens who have the good order of society at heart will regret it as I do. The editors and the collaborators of the three publications

of the Defendant claim to be serving the interests of their French-Canadian compatriots in demanding the expulsion of the Jews and in dubbing them assassins and thieves. History of the immediate past ought to render them more circumspect and better advised. They forget that French-Canadians are in a feeble minority in North America. These still bear the bruises of a secular struggle in the course of which this powerful legal bulwark which assures them the maintenance of their institutions and the survival of their group was constituted. Placed in an almost desperate position by the conquest their tenacity and their virtue have established this great entity of social truth whose fruits they enjoy today. Atavistic hatreds finally become dulled. But the conflict of souls frequently undergo terrible and disconcerting eruptions. It is with difficulty that human instincts are held in check. It was by an appeal to tolerance that the compatriots of the Defendant raised their rights at least in this province to an equal plane to those of the victor.

Should the day come, when, perhaps they will again be called upon to appeal to that spirit of justice which characterizes our British fellow-citizens, may they not hear the voices of yesterday, augmented by the recently introduced race, and aggravated by unjustifiable attacks, replying; You ask for tolerance? Why do you refuse it to others? From a campaign of the type which is being carried on before our very eyes there may indeed arise a new dram in which we might lose what we hold most dear. Revolutions occur always at the precise moment when power passes from the persecutors to the persecuted--that is to say, to those in whose breasts there has accumulated as a result of long suffering, immense reserves of hatred and

rancor, endowing vengeance when it comes, a passion in no manner divine. A recent example will serve to elucidate my thought.

M. Paleologue, member of the French Academy, once ambassador of Rance to St. Petersburg in 1915 wrote the following lines in his "Russia of the Czars." "With every repulse of the Russian armies the police adds new zeal to the expulsion of the Jews. Everywhere the exodus is conducted, as a matter of course, in haste, and with as much awkwardness as brutality. Those concerned are not warned until the last moment; nor are they granted the opportunity to take anything with them. Hurriedly they are herded into the trains; like droves they are goaded on the highways. They are not told of their destination; and it, indeed, is changed twenty times in the course of the journey. Almost everywhere as soon as the ukase of their expulsion is known in the city, the orthodox population rushes to pillage the ghetto. Pales in Podolia, in Volhynia, in Bessarabia, in Ukfainia, they are everywhere reduced to abject misery. The total number of the expelled reaches eight hundred thousand." And this was happening at a time when a hundred thousand Jews were pouring their blood on the battlefields of Russia, and at a time when thousands of Jews were in the trenches of Flanders and Picardy.

When that horrible tragedy transpired in the cellar of a certain house in Ekaterinburg, did the innocent haemophilic child, heir to the throne of the Czar, know that he was the expiating victim of ancestral and paternal crime? One may well believe it; history is replete with these terrible intuitions.

The publications of the Defendant go so far to pronounce anathema on the University of Montreal, which gives medical, legal, and philosophical instruction to Jewish students. Are not all nations subject to the injunction of the Golden Rule? Must a reminder of this be made to Catholics?

So as better to realize the seriousness of the campaign which the Miroir, the Goglu and the Chameau are carrying on, it would be well to emphasize certain excerpts from their columns. "Jews are assassins!" writes the Miroir. "Jews, insofar as the necessities of their religious practice are concerned, are murderers in the full and brutal meaning of the word." One shudders merely to repeat these quotations. The Miroir insistently reiterates the absurd ritual blood accusation which the Popes themselves have treated as it deserves. In the final analysis, of what avail, in the eyes of historians, is the testimony by torture drawn? What proof have we of these facts?

Less than a centry after the French Revolution writers on the subject refuted and contradicted one another concerning events and characters of this period. Imagine now, how much one can sincerely believe on the question of ritual murder, a subject which is even less documented. But even assuming that it is true, that a few misguided persons--about five case of which there is any record in two thousand years--in which they were fanaticised by persecutions and expulsions, perpetrated such crimes--can the present generations be held responsible for that? Did one not also allege the same type of ritual murder against the early Christians? And who dares to maintain that such a monstrosity was true? The Pagan Emperors, too, based their persecutions of early Christians on allegations as absurd as those which are in vogue to-day.

One of the publications of the Defendant goes so far as to say; Historical and contemporary facts, at all

events, allow Christians to fear for themselves, especially during the Jewish Easter, in March and in April. Who cannot see in such an audacious writing an appeal to rioting? Is not the plaintiff, Abugov, justified in fearing for himself and for his kin a blind and bloody outburst of mob violence? Suppose a coincidence, always within the realm of possibility takes place: the disappearance of a Christian child around March or April next, and such things happen often enough; who could answer for the calm of the crowd, always impressionable, if its imagination had been raised to a white heat by such incendiary writings? A single word from an excited person might be enough to let loose events which might have the most disastrous consequences for social order. An imprudent word, like that which was uttered with reference to the Lindberg child, when abruptly suggested to troubled and suspicious minds, might indeed cause the gravest of consequences.

One of the journals published by the Defendant declares that the Jews are the children of Satan. I may be permitted to recall that St. Paul and Bossuet, to mention only these two illustrious names, do not share this opinion. Far from believing them the sons of Satan, they both agree, though fifteen hundred years divides them, in recognizing the Jews as sons of the God of Abraham and Jacob. In his oration on "Universal History," after having noted with St. Paul in his Epistle to the Romans that the refusal of the Jews to recognize Jesus as the long-awaited Messiah, procured the salvation of the Gentiles, Bossuet writes Thus we profit from their disgrace; their infidelity was one of the foundations of our faith; they teach us to fear God and they are to us an eternal spectable of the judgment which He inflicts on ungrateful children, so that we may learn not to

glorify ourselves, because of the grace accorded to our ancestors. So marvellous and useful a mystery for the instruction of the human race merits consideration. But we need not human speech to understand it; the Holy Ghost, through the mouth of St. Paul, took care to explain it to us, and, I pray you hearken to what this Apostle wrote to the Romans.

Here Bossuet quotes the passage from the Epistle of St. Paul to the Roman. "The Jews have fallen," says the Apostle, "but shall they never rise again? God forbid. But their fall made possible the salvation of the Gentiles, so that the salvation of the Gentiles might by example teach them to bethink themselves. If their fall was the occasion of the good fortune of the Gentiles who have been converted in such great numbers, what grace shall we not see arising when they return to grace? If their reprobation caused the reconciliation of the world, will not their return be the resurrection from death to life? If the first fruits of this people are holy, is not its stock also? If the root is holy, the branches are holy, and if some branches have been lopped off so that thou, Gentile, who wast no more than a wild olive tree, mightest be grafted in their stead, enjoying the sap mounting from its root, beware of rebelling against the natural branches. If you rebel, remember that it is not you who bear the root, but that the root bears you. You may perhaps say; the natural branches have been cut so that I might be grafted in their place. It is true that infidelity has caused the cutting-off of the original branch, and that your faith has placed you there, in its stead. Take care, therefore, that you do not swell up with pride, but remain always in pious fear, for if God did not spare even the natural branches, how much less will he spare you?"

And Bossuet adds these words which I urge the Defendant and his collaborators to consider: "Who will not tremble in listening to these words of the Apostle? Ought we not also to be appalled at the sight of that vengeance which for so many years has been wreaked upon the Jews, since St. Paul in the name of God warns us that our ingratitude might bring down on us a like treatment?"

The great Bishop of Meaux prophecied with St. Paul that the Jews, Sons of God, not of Satan, will come back and be converted. The anti-Jewish campaign of the Miroir, Goglu, and Chameau, is therefore equally anit-Christian. This same campaign led by Drumont in France ended only in leaving France divided against herself, in weakening her moral forces and in the banishment of an innocent man to Devil's Island.

The Jewish race is one marvellously gifted. Despite their faults (which of us has none?) they offer for our reflection the prodigious and outstanding example in history of a people surviving the empires which enslaved it. Where are now the Assyrians, the Egyptians, and the Persians? What has become of the Russian and Spanish Empires? The brutal pen which at Madrid has just signed the edict of the expulsion of the admirable Sons of Loyola, was dipped in the inkwell of Ferdinand and Isabella who sent a hundred and seventy thousand Jewish families upon the road of exile. Let the Jews take consolation. For them as for every other man it has been said: "Blessed are ye, when men shall revile you and persecute you" and I am sure that the writer of the Miroir will not doubt the authenticity of those words. And it is this same Scripture, moreover, which orders men to love one another.

I want to note carefully the nature of this campaign in order to deplore the fact that the law has not placed in the hands of the magistrature the necessary implement to keep such movements within decent limits.

It is not a question, may the Lord forfend, of suppressing the liberty of the Press. That liberty is the precious conquest of the modern spirit. To attack its abuse might involve an attack upon that liberty itself. I therefore understand the scruples of the legislature.

I have carefully examined that well-established jurisprudence on Article 957 of the Code of Procedure. That jurisprudence is supported by the refusal of the Quebec Legislature to adopt the bill presented at its last session and leaves me no discretionary power. That Bill would have allowed me to apply the injunction in a case like the present. It is now for the Legislature to find the remedy which at present is not available. But I hope--for reflection will surely bring about sentiments more Christian--that the Defendant will himself understand the irreparable harm that he is causing his race in the eyes of the people of this continent.

Considering, therefore, that the petition is not justified by any provision of the Code of Procedure the Court rejects the petition for an interlocutory injunction, with costs.

(Signed)
GONZALVE DESAULNIERS

THE DESAULNIERS JUDGMENT

(Montreal Star)

Montreal, the Province of Quebec, and Canada are each founded upon tolerance. If intolerance ran amok, neither our city, our province, nor our country could survive.

Every intelligent, patriotic citizen will approve Mr. Justice Desaulniers' scathing strictures upon those who conduct anti-Jewish campaigns amongst us, and will share his regret that the law, as it stands, does not permit him to curb their activities by means of injunction. As the judge points out in his Superior Court decision, it is for the Legislature to find the remedy which is not available at present. Meanwhile the overwhelming weight of public opinion condemns all malevolent campaigns to stir up racial hatred.

Mr. Justice Desaulniers' judgment is a remarkable document which deserves a place alongside the great pronouncements on British liberties and tolerance. It is particularly effective coming from a French-Canadian, expressing as it does the view of the overwhelming majority of French-Canadians. "It is by an appeal to tolerance that the (French-Canadian) compatriots of the defendant raised their rights, at least in this province, to an equal plane with those of the victor", says the judgment. And English-speaking Canadians should be quick to acknowledge the tolerance of the local majority under which the English-Canadian lives happily and harmoniously in this city and province.

This anti-Jewish campaign is in reality anti-Christian in spirit and in effect, as Mr. Justice Desaulniers points out. Furthermore, as he goes on

to show, such persecutions are at the base of much revolution. "Revolutions arise always at the moment when power passes from the persecutors to the persecuted."

Our Jewish fellow-citizens will take comfort from the splendid tribute to their race penned in this judicial document. "The Jewish race is one marvellously endowed..... It offers to our contemplation the prodigious fact of a people surviving the empires which enslaved them."

Editorial.

ANNUAL REPORT OF MISHPOT HOSHOLEM.

Since the last Meeting of the Montreal Jewish Community Council some fifteen months ago, two hundred and sixteen applications were fyled for adjudication by our Court. These applications, as you know, are fyled at the office of the Council with a deposit of $2.00, and the contracts for submission for a decision to our Court must then be signed by the litigant parties and three judges then sit in judgment - one a rabbi, one a lawyer and one a layman.

Out of the two hundred and sixteen applications fyled, our Court has actually heard one hundred and fifty-nine cases and rendered one hundred and fifty-nine judgments. These sessions sometimes lasted until the early hours of the morning, but countless disagreeable problems were settled in this way.

We have had, for instance, cases involving 'sholem-bais', 'shatchonas', 'hasogath-gevul', 'chazokes', disputes between congregations and chazonim, claims for commission, questions of mortgage, insurance, personal insult, purchase and sale, and numerous other types of litigation. We have had to solve very delicate problems dealing with questions of morality, and involving reputations of men and women in the community, all of these have received very careful consideration and have been adjusted to satisfaction; we have, in fact, had cases referred to us by Judges of the Superior Court, and have had appear before us Jewish and non-Jewish lawyers who pleaded their cases before our Tribunal after action was instituted before the local Courts.

Many a 'chilul-hashem' was avoided through the intervention of our Court. We have had, for instance, a case where a sister lodged a Criminal complaint against her own brother, both in their late thirties, and our Court adjudicated upon this complaint and avoided many a heartache and retained the reputation of the people involved.

We adjusted several disputes between congregations and their members, which certainly would have created a disagreeable impression upon our non-Jewish neighbours were they to have been heard in the Courts of the realm.

We have also adjudicated upon problems between loan syndicates and their members, as well as other organizations and their members, and,- I feel that a very active year of work has been accomplished by our Court.

I wish to draw to your attention that our Court is now in existence for a period of about ten years, and, during that time, we have heard and adjudicated upon close to fifteen hundred cases. You will realize that the Montreal Jewish Community Council has undoubtedly rendered a service to the community through this branch of its activities. Our Court has earned the esteem and the admiration of our non-Jewish neighbours, so much so that the Montreal Star, during the past year, appointed several members of its staff to make an investigation into the functioning of our Court,- and, you have all seen the result of their findings when they gave so much very favourable publicity in the issue of its paper of February 27th, 1932 where there appeared a photograph of our Court in session; a very favourable and commendable article was also printed in the Christian Monitor, published in Toronto, which sang the praises of our Court and the work that it was doing, more particularly in its work as a Court of Domestic Relations.

I wish to draw to your attention that the entire personnel of our Court acts without remuneration. We impose upon the various members of the Rabbinate, the Bar, and upon laymen whose judgment is known to be fair and sound, to sit in these cases, and,- I want to take this opportunity of extending my sincere thanks to the rabbis, to those members of the Bar, and to those gentlemen who have assisted us in sitting in judgment and adjudicating upon the various cases submitted, as well as the staff of the office whose work is untiring and whose co-operation is given willingly at all times and, in this way, to make it possible to render to this community the service that I have just reported.

The whole respectfully submitted.-

[illegible]jority Judgment Rendered by Board of Abritrators [illegible]d Mediators in the Dispute Between the Affiliated [illegible]ssociation of Shochtim (Agudah) and the Jewish Community Council (Vaad) of Montreal

BASIC CAUSES OF THE DISPUTE

The Agudah, consisting of eight-[illegible] shochtim had entered into a [illegible] with the Vaad in 1930, [illegible] contract expired March 8th, [illegible] Prior to this contract, the [illegible] constantly served the [illegible] for many years. After [illegible] 8th of March 1933 the shoch-[illegible] were not re-engaged and nine [illegible] shochtim were engaged for the [illegible] of cattle for the Jewish com-[illegible].

The Agudah contends that in [illegible] of the Jewish rule of law re-[illegible] to "chazoko" the members [illegible] the Agudah acquired the right to [illegible] in their capacity for life; [illegible] they could not be dismissed, [illegible] that no other shochtim had a [illegible] to assume their positions as [illegible] as the shochtim performed [illegible] duties properly and as long [illegible] they did not contravene or [illegible] any accepted rules of [illegible] law.

The Vaad, on the other hand, [illegible] that during the year 1922, [illegible] the Vaad was organized, the [illegible] for killing cattle was — through [illegible] instrumentality of the Vaad — [illegible] to 1½ cents per pound. This [illegible] an increase of ½ cent [illegible] pound. The intention of the Vaad and the consumers of Kosher [illegible] was that this ½ cent was to [illegible] a special tax imposed for the [illegible] of maintaining the Jewish [illegible] and cultural institu-[illegible]. The Vaad contends that in the past this ½ cent was not set aside for the said purpose, but was divided generally to the benefit of the shochtim, rabbis, etc.

Before the expiry of the con-[illegible], the Vaad demanded that a new arrangement be made with the shochtim, whereby the earnings of the shochtim be reduced, so as to enable the Vaad to establish a spe-[illegible] fund for the maintenance of the Jewish educational institutions. The shochtim refused to grant an ample and reasonable reduction, according to the contention of the Vaad, but intrigued with the Jew-[illegible] butchers, and aided in creating a competitive group for the pur-[illegible] of undermining the influence of the Vaad.

In the interest of the community the Vaad contends that it was ob-[illegible] under the circumstances to engage the new shochtim. More-[illegible] owing to the fact that it repre-[illegible] the voice of the people [illegible] Ahobah) it had a right to deprive the old shochtim of their "chazoko" rights and that the ap-[illegible] of the new shochtim did not constitute a usurpation of the shochtim's rights. (Asugas Kvulo.)

A serious rift followed this dis-[illegible], almost amounting to a bitter [illegible] or a community "machloka". This situation lasted for about five months, and caused serious results with respect to kashruth in gener-[illegible] and the selling of kosher meat in the Jewish community of Mont-[illegible]. A disastrous competition was [illegible] the retail butch-[illegible] belonging to the Vaad, and [illegible] associated with the shochtim [illegible] Jewish wholesalers, culmina-[illegible] in a "General Stoppage", all [illegible] butchers agreeing to stop this [illegible] competition, and the [illegible] decided to terminate the [illegible]machloka.

On July 26th, 1933, the parties [illegible] an agreement to submit any [illegible] all of their disputes to a Board [illegible] Arbitrators and Mediators. B. [illegible] was appointed the Arbitra-[illegible] for the Vaad; I. Kugelmass, the [illegible] for the Agudah; and M. [illegible] Myerson, as Referee. The con-[illegible] governing the decision to [illegible] rendered was set out in the said contract.

Nine sessions were held, during which the parties submitted evi-dence, adduced expert evidence as to Jewish law relating to rights of chazoko, dass skotod, and asugos kvul; and argued the merits of the case with efficiency and excellence. After having heard the parties, and having carefully deliberated the issues, we have arrived at the following decisions, which, for the purpose of convenience, may be classified under two headings:—

(A) The Decision regarding the question of fault in having brought about the machloka,

and

(B) The Conditions which are to govern the peaceful relationship between the parties; the terms of re-engagement of the Agudah; and the defining of the rights and duties of the respective parties, inter se.

(A) The Question of Fault.

—We find that both parties are at fault in having created the situation, and having brought about the machloka, owing to their lack of tact, their intolerant behaviour, lack of foresight, and proper appreciation of potential consequences; failure to show and exercise a sympathetic understanding of one towards the other; and failure to take any and all precautionary measures to avoid the rift.

The Shochtim Failed to Realize and Refused to Understand:—

1. That the members of the Executive of the Vaad were earnest and zealous community workers, who devoted all their energies towards the community interests, inspired with the ideal of Jewish education and Jewish cultural development. The shochtim had no right to suspect that these idealists entered into the Vaad merely for the purpose of curtailing the shochtim's revenue, or, for the purpose of exercising dictatorial powers towards the Agudah. (Evidence of Messrs. L. Kolton, H. M. Ripstein, J. Abel, M. Dickstein, and Dr. M. Ratner.)

2. That the Jewish community had a right to be under the impression that one-third of the shechita fee was paid for the purpose of maintaining Jewish educational institutions. (See Protocols of the Vaad for the years 192[illegible]-23.)

3. That being under that impression, the Jewish community was justly aroused and angered at the fact that this special fund was not used for the special purpose, but was dissipated amongst the shochtim, rabbis, etc. The community believed that this practice was in part responsible for the financial embarrassment of the educational institutions, and felt bitter resentment at the fact that the doors of the Talmud Torahs were closed. The leaders of the present administration of the Vaad were chosen by the vast majority of the Jewish population, to see that this practice and abuse be done away with. The shochtim failed to realize that the leaders were merely performing their duty and carrying out their mandate.

4. The shochtim should not have approached the community leaders with the attitude of hagglers; they should have reasoned with the Vaad, instead of practising so-called shrewdness and cunning. They had no right to advise the leaders of the Vaad that shechita was "none of the Vaad's business." For these leaders were not attempting to rob the shochtim of their just remuneration, but were aiming to restore the fund, which the consumers had especially fixed, and which should have been set aside for educational purposes. (Evidence of Messrs. G. Laxer, H. M. Ripstein, Dr. M. Ratner, and Abel.)

5. Even if the Vaad rejected the compromise suggested by the rabbis, the shochtim had no right to intrigue and combine with the Jewish wholesalers to compete with and combat the influence of the Vaad. The Agudah should have disputed with the Vaad, by way of open and public debate, and not by means of intrigue. At no time can the Agudah consider the Vaad an enemy to be combated; for victory in the long run, victory against their own interests.

The Vaad and Its Representatives Failed to Realize and Refused to Understand:—

1. That the anger of the community towards the shochtim was in a large measure unwarranted, that the principle that one-third of the shechita remuneration be set aside for educational purposes was maintained and practised for a brief period, namely, from November 1922 until February 1923. During the subsequent years, the shechita fee changed, the practice lapsed, and the principle was extinct. It is true that in 1929 the fee of 1½ cents per pound was restored, but, at this time the leaders of the Vaad did not recognize the principle established in 1922, and had no intention of setting aside a reasonable share for the purpose of educational institutions. It, therefore, stands to reason that if the Vaad and its leaders abandoned that tax, it was natural that the shochtim also believe that their remuneration represented payment for arduous toil, and not ill-gotten spoil belonging to Talmud Torahs, and to everyone else. The present Executive of the Vaad should have appreciated the shochtim's point of view, and that these latter were sincere and conscientious in believing that the community's demands amounted to extortion. (Evidence of Messrs. Laxer, Kolton, Aspler, Sax, and Litotsky.)

2. That it was reasonable that the shochtim should have united and formed an organization to promote their economic welfare, and that the shochtim should have viewed with suspicion the Vaad's attempt to split with the Agudah into various factions. It was natural for them to combat any attempt to reduce their earnings, and to lower their standard of living.

3. The Vaad should have realized that when the shochtim accepted the compromise suggested by the Vaad Harabonim, they had a right to believe that they were conforming with a request of an authoritative body of the Jewish community. When this compromise was rejected by the Vaad, it was natural that the shochtim should have viewed this rejection with suspicion. (Evidence of Messrs. G. Laxer, H. M. Ripstein, Jacob Abel, and Dr. M. Ratner.)

4. That even if the shochtim had formed an alliance with the wholesalers on the 19th of February, 1933, to the detriment of the interests of the community and the Vaad, the shochtim's subsequent request to arbitrate the dispute should have been acceded to by the Vaad. The leaders of the Vaad had no right to be influenced by the unwarranted venom of the community; they had no right to adopt an attitude of "we-will-show-you" especially when they were warned by the rabbis in general, and Rabbi Berger in particular, of the great wrong that would be perpetrated if the shochtim were dismissed, and new shochtim appointed. (Evidence of Messrs. G. Laxer, H. M. Ripstein, Dr. M. Ratner, and the Jewish Eagle, February 22nd, 1932.)

5. We consider that the approach of the Vaad to the venerable and old gentlemen of the Agudah should have been more sympathetic. The leaders did not rise to the spiritual height of envisaging the situation in its proper colours. The argument urged was that the Vaad represented the voice of "kohol", and that its decision amounted to a rule of law, is a form of distorted dialectics. For, given the fact that there was a misunderstanding or dispute between the Vaad and the shochtim, the Vaad's opinion could not form a decision, or a rule of law; for, — in that event — the Vaad would be "plaintiff, judge, and jury." This form of reasoning was acceptable in the mediaeval period, to defend the Divine Right of Kings, — but, is not tenable in the present day. It must be remembered that eighteen families were involved in the dispute; and, when the shochtim requested, and even begged for arbitration, from February 28th, 1933, until the expiry of the contract, this request should have been granted. If we can arbitrate the dispute now, why could an arbitration not have taken

(B) Conditions to Govern The Peaceful Relationship Between The Parties

1. With respect to the various conditions raised by the parties as to the rights of the Vaad and the Agudah, we had no hesitation in defining the respective rights as follows —

(i) The Vaad is the true representative body of the Jewish community of Montreal, representing fifty-four organizations, numbering about twenty-five thousand individuals. It is the highest instance, and the sole voice of the Jewish people as a community. It has the sole and absolute rights of administration and supervision in all matters pertaining to kashruth and shechita. In the performance of its duties, it must not be interfered with, either by the Agudah, or any of its members.

The Vaad, or its leaders, however, must act within the scope of justice and in accordance with the Jewish Laws and Customs. The leaders must not be despotic towards the shochtim, and must not at any time consider themselves as a law unto themselves. (Unfortunately, this was the case with some members of former administrations.)

(ii) The Agudah, on the other hand, and its members are not recognized as partners or contractors, or even employees of the Vaad. They are in a unique category, namely, ministrators of religious service to the community — (Klei Kodesh). As such, the Agudah, or its members, do not acquire a monopoly, but merely acquire the rights of chazoko. The relationship between the Vaad and the shochtim is not that of an employer and employees. Their relationship is much higher than that; for the shochtim have not the freedom to sever connection with the Vaad, and the Vaad, on the other hand, has not the freedom to dismiss.

2. We have decreed that in case of death of any member of the Agudah, or, should any shochet belonging to the Agudah, desire to retire, the Vaad shall then have the privilege of purchasing the chazoko rights of the deceased or the retired members, on the payment of a reasonable price.

3. We recognize that part of the fee for shechita was originally imposed as a preferred charge or tax for the maintenance of Jewish educational institutions in Montreal. The original intention was that this charge should amount to ½ a cent per pound. Taking, however, the fact into consideration that the practice lapsed, and that it is now impossible to balance the budgetary requirements of the Vaad, if the entire proportion was set aside, we have therefore decreed:—

That 20% (twenty percent) of the gross revenue derived from killing of cattle, calves, etc., be set aside as fees, first lien, or trust fund, for the maintenance of Jewish educational and cultural institutions.

We feel confident that the present Administration will easily increase the amount through conscientious efforts and the practice of economy.

4. Of the balance sum left after the above 20% has been set aside, the shochtim of the Agudah are to receive 60% (sixty percent), and the Vaad the remaining 40% (forty percent). The Vaad is to enter into a contract with the Agudah for a period of three years, in the spirit of the principles and conditions outlined in the present judgment.

5. We recommend that a committee be appointed of some members of the Vaad and the Agudah. The functions of this Committee will be to promote greater kashruth in the City; to aim at increasing the sales of kosher meat in stores and restaurants where non-kosher meat is being sold; to look after the recording of weights and measures of meat killed; and, generally to assist the Vaad in preventing the misrepresentation practised by some unscrupulous traders in selling treife meat as if it were kosher.

6. All cheques issued by the wholesalers in payment of the shechita are to be made payable to the Vaad. It is understood, however, that should the Vaad fail to pay to the Agudah its just proportion of the revenue for two consecutive weeks, the shochtim will have the

Majority Judgment Rendered By Board of Arbitrators and Mediators In The Dispute Between The Affiliated Association of Schochtim (Agudah) and The Jewish Community Council (Vaad), of Montreal

(Continued from page 4)

issue the cheques in the name of both the Vaad and Agudah jointly.

7. Owing to the fact that a number of retail butchers have been associated with the shochtim during the machloka, in order to restore absolute peace, we recommend that these butchers be accepted as members of the Vaad, without putting any difficulties in their way, the whole subject to the general rules of the Vaad. We would also suggest that for the same reason, Rabbi Sternberg, who has been affiliated with the shochtim during the dispute, be reinstated by the Vaad.

8. As a precautionary measure, to avoid future strife between:—

(a) Members of the Agudah themselves.

— and —

(b) The Agudah and the Vaad we recommend that any and all disputes arising between the said parties be submitted to arbitration. The spirit of this order is that peace be permanently maintained between the parties, and that there should be no room for any shochet or member of the Vaad, to harbour any ill-feeling against the other respective party.

9. It has been disclosed that during the past ten years some members of the Agudah separated themselves from the Vaad and formed alliances with wholesalers or retailers, for the purpose of combating the Vaad. We find that this practice was pernicious, and was detrimental to the general morale of the Jewish community. We therefore rule:—

That should any members of th[illegible] Agudah leave the Vaad, for th[illegible] purposes above mentioned, the sa[illegible] member should be immediately ex[illegible]pelled from the Agudah. Moreove[illegible] he shall lose all rights of chazok[illegible] and all benefits accruing to hi[illegible] from the Agudah. We have decide[illegible] that the Agudah pass the neces[illegible]sary by-laws to give effect to t[illegible] above ruling. In that event Vaa[illegible] shall have a right to intervene [illegible] the affairs of the Agudah to s[illegible] that this rule be given proper effe[illegible]. Moreover, should it be discovere[illegible] that the majority of the membe[illegible] of the Agudah has allied itself wi[illegible] the delinquent member, or, mem[illegible]bers, the contract between the Va[illegible] and the Agudah shall then be co[illegible]nsidered cancelled, null, and void.

10. In view of the fact that [illegible] found that both parties have co[illegible]ntributed to the occurrence of t[illegible] machloka, we deem that the wis[illegible] scheme of settlement is to resto[illegible] the parties to the status quo a[illegible]. Following this principle, we the[illegible]refore have decided:—

(i) That the members of [illegible] Agudah are the only shochtim w[illegible] have the rights of chazoko for [illegible] killing of cattle, calves, etc., in [illegible] City of Montreal. These rights [illegible] governed by Jewish Rules of La[illegible].

(ii) We recognize, however, t[illegible] the Vaad has contracted with nine new shochtim by way [illegible] written contracts, which con[illegible] expire March 9th, 1934. These [illegible]tracts must be honoured. We, th[illegible]fore, order that the Agudah [illegible] its members are to pay the sala[illegible] to be due to the said nine shoch[illegible] for the balance of the period, a[illegible] deducting any amount or amou[illegible] which the said shochtim may e[illegible] either by way of shechita, or oth[illegible]wise. Moreover, these shochtim s[illegible] have the preference of filling [illegible] vacancy created by the death [illegible] retirement of any member of [illegible] Agudah, on paying the requ[illegible] chazoko charge.

(iii) We furthermore decided [illegible] the Vaad and a Committee of [illegible] Agudah devise ways and mean[illegible] utilizing the services of the [illegible] nine shochtim to the best inte[illegible] of the community, in the spirit [illegible] these nine shochtim be not grieved, if at all possible.

It is the sincere hope of [illegible] Board that this decision will a[illegible] cementing a proper foundation [illegible] peace in the Jewish communit[illegible] Montreal. We hope that the pa[illegible] will recognize that any ill-feelin[illegible] one towards the other was [illegible] warranted in a large measure; [illegible] that a proper formula of proce[illegible] for maintaining peace has [illegible]

NEW BETH YEHUDA SYNAGOGUE

Rabbi Shalom H. Barenholtz

Services Friday at 7.45 p.m.; Saturday at 9 a.m. Sermon before Mussaff. Junior services Friday at 7 p.m. Saturday at 8.15 a.m. Moses Derabaner and Max Rabinovitch gabbaim Willie Fainer, Saul Rind

and Mediators in the Dispute Between the Affiliated Association of Shochtim (Agudah) and the Jewish Community Council (Vaad) of Montreal

(The Majority Judgment Rendered by the Board of Arbitrators was published in full in last week's issue of the *Review*.)

Preamble

My Colleagues, Mr. H. Myerson, Mr. I. Kugelmass, and I have been delegated to hear evidence and to peaceably adjust any difference of opinion that heretofore existed between the Affiliated Association of Shochtim (Agudah) and the Montreal Jewish Community Council (Vaad). I further am of the opinion that it was our purpose not to render a strict and final judgment, irrespective of whom it may please or displease, but rather to work out a "modus operandi" for the peaceable relationships between the above two Associations and to submit a plan which will assure peace and harmony in the Community with respect to Shechita and Kashruths.

For these reasons, although eight sessions were fully occupied hearing evidence on this point, I will not discuss the causes which gave rise to the present dispute; nor will I lay the fault for the disagreements at the feet of any one of the parties, but, I will confine myself purely to constructive suggestions and opinions with respect to the future relationships between the parties and to touch upon the various conditions raised by them as to their respective rights. In order to give effect to the above I must first define the respective rights of the Vaad and of the Agudah.

Definition of Vaad, Agudah and Their Respective Rights

The Vaad Hoir, in my opinion, is the mouthpiece of the Jewish Community;—it is the true representative body of organized Jewry of Montreal, properly selected in a most democratic way; — it is the highest instance and the sole voice of the Jewish Community; — it owns all proceeds of Kashruths and Shechita. The Vaad has the sole and absolute right of administration and supervision of all financial matters and all other details pertaining to Kashruths and Shechita. The Vaad has the authority to engage Rabbis, Shochtim and Mashgichim; to organize and to define their various duties, and to determine the stipends of all those engaged in giving effect to the Vaad's functions.

The Agudah, on the other hand, and its Members, are an Organization of eighteen Shochtim with defined rights and privileges amongst themselves as between themselves. They enjoy whatever rights and privileges Jewish Law and Custom prescribe. They are not partners in any sense of the term with the Vaad Hoir, but, in view of Jewish Custom governing Shochtim, they are considered privileged employees; under [illegible] they a[illegible] to [illegible] ful services to the Community, they may be entitled to benefit by a system of pensions, protection in the event of illness, old age, and the care of dependents in case of death. Before I pronounce myself formally on this question, I would like to touch on the Agudah's claim of "Chazokah."

Chazokah Rights

If the Agudaths Hashochtim ever had Chazokah rights in Montreal . . . and that is questionable, . . . in my opinion they lost such Chazokah rights for many reasons.

Expert evidence has been adduced to show that their own actions in continually breaking the T'konoiths Hoir, they have vitiated any Chazokah rights to which they had pretensions. The President of the Vaad clearly declared, and his declaration is quite obvious, that, without the interference by the Shochtim, and if the Vaad would be permitted to function and to execute the mandate given to it by its last Annual Meeting, the Community and its Educational Institutions would have benefited to the extent of approximately $50,000. per annum. It is evident from the witnesses heard that the Shochtim have interfered and prevented the Community from benefiting to that extent, first, by having entered into secret contracts with butchers; secondly, by refusing to slaughter under terms suitable to Community interests; thirdly, they have appropriated the one-half cent expressly allocated for educational purposes; fourthly, they have interfered and unfairly competed in prices of slaughtering — the whole against the interests of the Community. I am of the opinion that the voice of the Community is Supreme, and that in refusing to follow and to fulfill the T'Konoiths Hoir, the Shochtim have forfeited and vitiated any pretended rights which they might have had. But, as I have previously declared, since we are not to render a Judgment, but rather to work out a "modus operandi" which will create the necessary co-operation in the Community, I therefore declare that notwithstanding these "Chatoim", the Vaad should respect and give effect to all the rights of these eighteen Shochtim as they exist today amongst themselves, with a reservation only concerning the following:—

In the event of death of any member of the Agudah, or should any of its members desire to retire, the Vaad shall have the right and the privilege of compensating such Shochet, or his family, in accordance with his privileges, and, this privilege shall then revert to the authority.

I made this declaration to my colleagues Mr. Myerson and Mr. Kugelmass; they saw fit to ignore it and I find it my duty to repeat it here.

Remuneration

I now come to the question of remuneration. This must be carefully examined from two angles. First, — how is the remuneration to be paid? Shall it be in a bulk sum to the Agudah — shall it be salary to the individuals, or, shall it be percentage of revenue, gross or net? The second question is that of amount.

Payment By Percentages of Commissions:

I will at once dispose of the question of percentages. Under no circumstances should the Agudah be a partner with the Vaad, nor should they work on a commission or percentage basis. Mr. Myerson and Mr. Kugelmass are of the opinion that the Shochtim should receive sixty percent of the revenue after the Hon of twenty percent from the gross revenue has been deducted for the Educational and Cultural Institutions. **This is both unreasonable and untenable.** For example, — if the Vaad realizes at any time in the future that the present revenue is insufficient, and, after due consultation with the entire Community, decides to levy a tax of an additional cent on each pound of meat so that the Institutions alone may benefit by this additional cent, the Agudah would immediately deduct sixty percent of this sum, and the tax would inure to their benefit rather than to the benefit of the Institutions for which it was intended. For this reason, I am of the opinion that whatever means of remuneration is decided, it must under no circumstances be that of percentage or commission. I am of the opinion that payment should be made to the Shochtim on a sliding scale based on their length of service to the Community, their ability to work, and the time devoted in the fulfillment of their respective duties, but, since the Agudah retains its own rights and they pay themselves equally, irrespective of ability or other deficiencies, then I recommend that a bulk sum be paid to the Agudah each week and they can divide this money as they see fit.

Payment By Bulk Sum

Now the question of amount. What bulk sum should be paid to them? Here I definitely emphasize that in calculating the figures, under no circumstances can we take into consideration the one-half cent levied for the benefit of our institutions. In my opinion, this one-half cent is Holy and not the smallest fraction thereof can be or should be utilized for any other purpose. We have had evidence from Mr. Chamberlain, of the Canadian Packers, Mr. McKewan, of the Wilsil's Limited, and from a number of other witnesses, that when the question of increasing slaughtering charges by one-half this sum should be paid to the Shochtim. This will give them approximately $15.00 or $20.00 per week to perhaps $60.00 per week. My opinion is, therefore, that the Shochtim should be paid as an Agudah $30,000. per annum, distributed over a period of Fifty-two Weeks. If, however, their number will be reduced from eighteen to seventeen or to sixteen, in accordance with the Vaad's right of priority as hereabove mentioned, then this sum of $30,000. per annum shall be reduced pro rata. I also recommend, that if in time, the revenue of the Vaad will increase through one source or another, that due consideration for increase in remuneration should be given to the Shochtim. The revenue of the Vaad at the present time do not lend themselves to any other calculations, and it can not divide monies which it has not got — it is sufficient when the Vaad divides and disburses every penny that it receives — and it can not do more.

The Nine New Shochtim

My colleagues, Mr. Myerson and Mr. Kugelmass were inclined to treat lightly the obligation of the Vaad towards the nine new Shochtim who came to the rescue of the Community in an hour of need. It has been established in the evidence, and by an interpretation of the Jewish Law, that a Shochet cannot be discharged except when he becomes unqualified, because, if you discharge a Shochet for any other reason, people may interpret that he is not a qualified Shochet. The Vaad cannot, therefore, discharge these nine Shochtim, nor even give them work of any other nature but that as a Shochet, since it would be the indecent thing to minimize the position of these men in the eyes of the public. Moreover, it has been established that these nine Shochtim are all family men, who left positions in New Brunswick, Winnipeg, St. Catharines, and other centres, and they have established themselves with their families in Montreal upon the pledge of the President and the entire Council of the Vaad Hoir that they would remain shochtim in this City. — The pledge of the Vaad is the pledge of the Community — and, I consequently conclude, that if the Vaad desires to retain these nine men, especially since their remuneration does not affect the revenues of the Agudah, that the Vaad Has a perfect right to do so, moreover, the Vaad has the right to assign to these men whatever work it (the Vaad) desires or sees fit. I am of the opinion that the Community is not only legally, but morally obligated to these men, and the Community's pledge must under all circumstances be respected.

Submission Communal Authority

I am, also, of the opinion that the Shochtim should submit to the complete authority of the Vaad and its Council of Rabbis and that each individual Shochet should sign in the presence of the Rabbinical Council on a "Ksav Nader Isur and Shevuah" that he will conform with the decrees of the Council and its

natural born Subject of his Majesty that he is residing in the Province of Upper Canada or has resided within the Province for One Year & that he has served in the Militia of the Province of Upper Canada. That he has never received a Grant of Land from the Crown & that he conceives he is entitled to the Grant he therefore prays

++

To His Honor Peter Russell Esquire
President Administering the Government
of Upper Canada &c &c in Council

The Memorial of Levy Solomons of
Cornwall in the Eastern District, on the be-
half of Moses Hart of the Province of
Lower Canada Merchant

Most Humbly Sheweth,

That the said Moses Hart has pur-
chased several rights to Militia lands from discharged
Soldiers, and some Commissioned Officers, as will more fully
appear, by their Certificates hereunto annexed —

That the said Soldiers have not drawn
any lands as yet, such as is expressed, in their respective Cer-
tificates, And that the said Moses Hart, being desirous of lo-
cating those lands in the Province of Upper Canada Your humble
Suppt Your Honor, will allow him to locate the same therein

And your memorialist shall ever &c

30th Oct. 1797

Levy Solomons Agent

Petition of Moses Hart
Read recommend
Granted

hether this latter statement,
hat is, in regard to conver-
on, is actually true.
The Jewish community, the
tter further states, has a
rivate synagogue and a
emetery but has neither a
bbi nor a shochet. The let-
r also states that the small
ewish community has al-
eady contributed to the re-
ef of the Jews of Germany
ius testifying to their de-
ire to be a part of the Jew-
sh people to render whatever
ervice its members can. The
ommunication to His Grace
the remark that the
ld be

To His Honor Peter Russell
Esquire, President, administering
the Government of Upper Canada
&c &c in Council

The Petition of Levy Solomons of the
Town of Cornwall, in the Eastern District

Humbly Sheweth

That your Petitioner Wishing to
become a Settler in this province, and not having
received any Lands as yet. humbly prays your
Honor will be pleased to Grant him such a
quantity as in your wisdom he may be entitled
to receive —

And he will ever pray.
&c &c
Levy Solomons

Cornwall 23. October 1797.

I Samuel Anderson Esquire One of His Majesty's Justices of the Peace for the Eastern District of the Province of Upper Canada do certify that Levy Solomons the annexed Petitioner Personally appeared before me this day and took the Oath of Allegiance signed the declaration as prescribed by Law and has been a resident in this place for two Years -

Given under my hand at Cornwall 30th October 1797

S. Anderson J.P.

To His Excellency Peter Hunter Esquire Lieutenant Governor of the Province of Upper Canada, and Lieutenant General Commanding his Majesty forces in Upper and Lower Canada &c &c

In Council

The Petition of Moses David of Sandwich, in the Western District Merchant

Most humbly Sheweth

That your Petitioner is a natural born Subject of his Britannic Majesty and on the encouragement held out to those persons who should first build in the Town of Sandwich, Your Petitioner, purchased an unimproved Lot, in the said Town, and at a very considerable expence, erected a good and sufficient dwelling House, and other Buildings thereon

That your Petitioner being desirous of obtaining a Park Lot, did in the Month of April 1801 obtain a Certificate from the Church Wardens of Sandwich, Certifying, that he had erected a good and sufficient dwelling House on the said Lot, and transmitted the same with a petition to your Excellency but your Petitioner has not received any answer thereto

That Your Petitioner was informed that Park Lots have since his said application been granted to several Individuals in this Place

Wherefore your Petitioner humbly prays, that your Excellency will be graciously pleased to grant him a Park Lot in the said Town of Sandwich and Your Petitioner as in duty bound shall ever pray

Moses David

Sandwich 2d January 1802

To His Excellency Peter Hunter [redacted]
Lieutenant Governor of the Province of Upper Canada and Lieutenant
General Commander In Chief of his Majesty's Forces in Upper
and Lower Canada &c. &c. &c.

The Petition of Moses Davis of Sandwich Merchant

Humbly Sheweth, that your Petitioner prior to the
evacuation of Detroit in 1796. resided at that Post, but so soon after as he possibly could, followed the
Royal Standard, and was one among the first Builders in the Town of Sandwich ——
Your Petitioner is a Native of his Majesty's Province of Quebec, and has on every occasion shown
his Zeal for the advancement of his Majesty's Service, as a true and Loyal Subject, and humbly
conceives himself entitled to his Majesty's Royal Bounty, so generously held out to all his Loyal Subjects
and more particularly so, to the first Builders in the Town of Sandwich ——
Your Petitioner forwarded his Prayer in the Year 1801. to Your Excellency
in Council for a Park Lot, in the rear of the Town of Sandwich, in Expectation that the same
would have been accorded him, agreable to Mr President Russell's Letter to the Magistrates of the
Western District, which he understands has been acceded, under the Idea, that his Religion
precludes him from any one of Land in his Majesty's Colonies ——
Your Petitioner therefore Humbly prayeth, that Your Excellency will
be pleased to take his case into your Consideration and grant him such relief, as to Your
Excellency may seem meet ——

Moses Davis

Sandwich 9th March 1803 ——

335
35

1803. No.

Moses David of the Town of Sandwich Merch.
Rec.d 19th April 1803
by William Allan Esq.r
Entered in Land Book
No 5. Page 238.

10 May 1803
Recommend that the Prayer of the Petition be complied with upon the Petitioner producing a Certificate from the Churchwarden of Sandwich that he has erected a Store on his Town [illegible] Premises, [illegible]

[illegible] Allcock Chairman

Moses David of Sandwich Merchant
Rec.d 19 April 1803 of
Wm Allen

Lieut Governors Office 9th May 1803
Referred to the Executive Council [illegible]
By Order of the Board
[illegible]

Council Office York 17th May 1803
Received the within Certificate of the Church Wardens of Sandwich from Mr Allan of York Merchant.

Sandwich 12 March 1803

I do hereby certify that Mr Moses David offered to go with me & serve as a Volunteer in Hale Stiamey in the Year 1794. when the American Army under General Wayne were before that Place.

J. McKee

We, the Subscribers, Church Wardens, for the Township of Sandwich, duly admittedly and appointedly, under the Act of the Legislature in such Case made and provided, Do Hereby Certify that Mr. Moses David, of Sandwich, aforesaid Merchant, has built a good and sufficient House on Lot, Number Three, in the third Range of the Town of Sandwich, and that we presume he is entitled to a Park Lot, under the instructions of his Honor the Late President, filed in the Court of General Quarter Sessions of the Peace, for the Western District of Upper Canada, the tenth day of June, 1797 -- Given under our Hands, at Sandwich, aforesaid, this twenty-fifth day of April, in the year of our Lord, One thousand, eight hundred and one.

Angus Mackintosh,

William Hands

Witness present,

C. W. Roe, (?)

Locations made in the Surveyor Generals Office 20 Feby 1804 by persons under the Regulations of the 30 Decemr 1802 paying the whole of the Patent Fee & Survey.

No. of persons: 1

Names: Moses David

Lot, Con., Township: Park Lot No. 7, north side of the Center Road Township of Sandwich.

Acres: 27

Fiat: 102

Order in Council: 10 May 1803

Granted: A Park Lot adjoining the Town of Sandwich.

By whom located: Mr. Allan

Remarks: Paid the whole of the Patent Fee & Survey.

The number of persons being one, and the Number of Acres amounting to Twenty Seven.

for the Surveyr General

CHEWETT & RIDOUT

Appd P. HUNTER Lt Govr

(ON BACK)

Locations made in the Surveyr Genls Office 20 FebY 1804 by persons under the Regulations of the 30 Decr 1802 paying the whole of the Patent Fee & Survey.

No. 102 In Council 10th May 1803

Granted to Moses David of the Town of Sandwich in the County of Essex, in the Western District -- Merchant.

A Park Lot adjoining the said Town of Sandwich.

for John Small, C.E.C.

JOHN BEIKIE

Thomas Scott Esqr
Attorney General

No. 102 4575 Receiver General's Office

18th February 1804

Moses David has paid into this Office Five pounds Eleven shillings Sterling. Being the Officers full fees according to the Order of 30 December 1802 for a Park Lot in Sandwich Ordered in Council 10th May 1803 and under this No. also One Pound Halifax Surveying fees thereon

(signed) PETER RUSSELL

R.G.U.C.

To the Clerk of the Ex. Council.

(ON BACK)

Moses David

A.G.O. 6525

Fiat 4575

(EXAMPLE OF MAGISTRATE'S RECOMMENDATION)

The Bearer, John Dachster, of Thirty five years of age, born in New York professing the Christian Religion, and by trade a Farmer having been this day examined by me, and taken the oaths prescribed by law, is recommended for a location of two hundred acres of land within this district, provided it does not appear from the surveyor's books that he has had any prior grant of lands in any district of this province.

Given under my hand this 28th day of Octo^{r} 1795

(sgd) JOHN SMALL

To the deputy surveyor of

the district of

BRIDEGROOM.					BRIDE.			WITNESS.		DATE OF
NAME.	Age.	RESIDENCE.	PLACE OF BIRTH.	NAMES OF PARENTS.	NAME.	Age.	RESIDENCE.	PLACE OF BIRTH.	NAMES OF PARENTS.	NAME.	RESIDENCE.	MARRIAGE.
Rathiel Myer	22	Toronto	Poland	Myer Myer Kate Myer	Hannah Goldberg	19	Toronto	Poland	Hyam Goldberg Hanna Goldberg	Joseph Lyon	Toronto	18th April 1858
Henry Joseph Altman	28	"	England	A. J. Altman Carol. Altman	Fannie Joseph	21	"	Germany	A. J. Joseph Altman Joseph Lawrence Levy	"	"	20th December 1858
Samuel Robert	26	"	Prussia	Isaac Robert Caroline Robert	Mariette Jean	22	"	Prussia	Joseph Jean Gallaite Jean Joseph Lyon	"	"	31st August 1858
Charles Cramer	29	"	Poland	Jacob Cramer	Bertha Goldsmith	18	"	Germany	Henry Hyam Goldsmith Julia Goldsmith Bernard Rosenthal	"	"	7th December 1858
Hermann Rosenthal		Montreal	Prussia	Joseph Rosenthal Paul Rosenthal	Rosalie Joseph		"	Germany	Abraham Joseph Rebecca Joseph	Isaac Goldberg	Toronto	12th Dec. 1860
Isaac Lumley		Toronto	New York	Isaac Lumley John Lumley	Rachel Lazarus		"	England	Lazarus Lyons Emanuel Lazarus Sarah Lazarus	A. Lumley	Toronto	26th March 1862
Benjamin Lyon	40	Toronto	Manchester Eng.	John Lyon Rachel Lyon	Eliza Lumley	28	Toronto	New York	J. B. Moses Lumley John Lumley W. Defoe		Toronto	15th November 1862
Myer Myers	24	New York	London Eng.	Michael Myers Fanny Myers	Lizzie Davis	18	Toronto	Toronto	James Brickel Rebecca Brickel Georg Joseph		Toronto	13th November 1862
Leopold Schuster	37	Toronto	Frankfort a/m	Seligman Schuster Henrietta Schuster	Sarah Seligman	25	Toronto	Wurzburg Bavaria	Jacob Seligman Sara Seligman L. Samuel		Toronto	23 December 1862
Jacob Stern	29	Toronto	Hesse Cassel	Abraham Meyer Rose Stern	Sarah Fogel	21	Toronto	Hanover	Wilhelm Oliver Rachel Oliver M. Solomon		Toronto	1 January 1863
Jacob Lumley	21	Toronto	Barnet Middlesex	John Lumley Rachel Lumley	Lea Goldberg	19	Toronto	Russia Poland	Heim Goldberg Simi Goldberg Louis Samuel		Toronto	29 January 1863
S. M. Solomon	34	Toronto	London Eng.	Moses Solomon Betty Solomon	Esther Moses	30	Toronto	Hanover	Jacob Moses Gyna Moses Michaelis Rafael		Toronto	5 July 1863
Irving S. Moses	26	Toronto	Prussia	Philip Isaacs Rosanna Isaacs	Rosalie Isaacs		Toronto	Toronto	Louis Samuel Rosa Samuel Hyman Samuel Fanny Samuel		Toronto	2 May 1878.
Moss Helen	21	Toronto	Holland	Abraham Helen Sarah Helen	Sarah Lyons	17	Toronto	London England	Benj. Lyons Mary Lyons	John Moss	Toronto	July 3rd 1878

Witness

340

No. 115 1932

BILL

An Act to amend The Insurance Act.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Insurance Act, 1932, No. 2.*

Rev. Stat., c. 222, amended.

2. *The Insurance Act* is amended by adding thereto the following section:

Discrimination against race or religion.

92*a*.—(1) Where it is found that a company licensed under this Act and carrying on business in Ontario declines risks or discriminates in any way against the race or religion of an applicant for insurance the company shall be guilty of an offence punishable as provided in section 77 of this Act.

Onus of proof.

(2) In any action or prosecution under this Act it shall be incumbent upon the defendant or accused to prove that he has not been guilty of any discrimination as set out in subsection 1.

Commencement of Act.

3. This Act shall come into force on the day upon which it receives the Royal Assent.

EXPLANATORY NOTES

This Bill is intended to put an end to a practice on the part of fire insurance companies of discriminating against applicants for insurance on the ground of their race or religion.

Subsection 2 is required because the defendant or accused is the only person having the necessary information on which to found a prosecution.

115

No. 115

3rd Session, 18th Legislature, Ontario
22 George V, 1932

BILL

An Act to amend The Insurance Act.

Mr. Singer

TORONTO
Printed by Herbert H. Ball
Printer to the King's Most Excellent Majesty

No. 71

4TH SESSION, 18TH LEGISLATURE, ONTARIO
23 GEORGE V, 1933

BILL

An Act respecting the Publication and Distribution of Discriminating Matter.

MR. MARTIN (Hamilton West)

TORONTO
PRINTED BY HERBERT H. BALL
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

No. 115

BILL.

An Act to amend The Insurance Act.

1st Reading
March 15th, 1932

2nd Reading
March 22nd, 1932

3rd Reading
March 24th, 1932

MR. SINGER

1932

No. 71 1933

BILL

An Act respecting the Publication and Distribution of Discriminating Matter.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Publication of Discriminating Matter Act, 1933.*

Prohibition of discriminating publications affecting religion, creed or class, etc., by owners, lessees, etc., of places of public resort.

2. No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement and no person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any apartment house or office building, shall directly or indirectly, whether by himself or anyone else, publish, issue, circulate, distribute, display or broadcast in any manner whatsoever, except as hereinafter provided, any communication, poster, folder, book, pamphlet, writing, print, letter, notice or advertisement of any kind intended or calculated to discriminate or actually discriminating against any religious sect, creed, class, denomination, race or nationality, or against any of the members thereof, in the matter of furnishing or neglecting or refusing to furnish to them or any of them any accommodation, right, privilege, advantage or convenience offered to or enjoyed by the general public or to the effect that any of the accommodations, rights, privileges, advantages or conveniences of any such place of public accommodation, resort or amusement or of such apartment house or office building shall or will be refused, withheld from or denied to any person or persons or class of persons on account of religious sect, creed, class, denomination, race or nationality or that the patronage, presence or frequenting at such place of any person, persons or class of persons belonging to any particular religious sect, creed, class, denomination, race or nationality is unwelcome, objectionable or not acceptable, desired or solicited.

Production of discriminating publication to be *prima facie* evidence of offence.

3. The production of any such communication, poster, folder, book, pamphlet, writing, print, letter, notice or adver-

Explanatory Note

The Bill in its terms is almost sufficiently self-explanatory, but briefly, the object of the Bill is to stamp out any attempt by persons owning or operating places of public resort, etc., to advertise publicly that their premises or accommodations are not open to persons of certain religious beliefs, colour, etc.

tisement of any kind whatsoever purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, superintendent, manager, agent or employee thereof shall be *prima facie* evidence in any proceeding under the provisions of this Act that the same was authorized by such person.

Description of places of public resort, etc.

4. Without restricting the generality of the words employed, a place of public accommodation, resort or amusement within the meaning of this Act shall be deemed to include any inn, tavern or hotel, whether conducted for the entertainment, housing or lodging of transient guests or for the benefit, use or accommodation of those seeking health, recreation or rest, any restaurant, eating house, public conveyance on land or by water or air, bath house, barber shop, theatre, music hall or dance hall.

Exception.

5. Nothing in this Act contained shall be construed as prohibiting the mailing of a private communication in response to a specific written or verbal enquiry.

Penalty.

6. Every person violating any provision of this Act for each violation thereof shall be guilty of an offence and shall be liable on conviction to a penalty of not less than $50 nor more than $500 recoverable under *The Summary Convictions Act*.

Rev. Stat., c. 121

Actions for damages not barred.

7. No prosecution or conviction under this Act shall be a bar to any action for the recovery of damages which may be brought by any person or persons injured by the violation of the provisions of this Act.

Commencement of Act.

8. This Act shall come into force on the day upon which it receives the Royal Assent.

3A4

No. 115

3rd Session, 18th Legislature, Ontario
22 George V, 1932

BILL

An Act to amend The Insurance Act.

Mr. Singer

TORONTO
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Printer to the King's Most Excellent Majesty

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[illegible] on file at the Superintendent's office, signed by eighty percent of the companies. No Bill was therefore needed.

In 1932 I raised the question of insurance generally because at that time it was almost impossible to get a policy for a Jew and I went to see the Premier and asked him if he would allow me to introduce a Bill at the next session, dealing with the subject.