

# Ezekiel Hart And The Oath Problem In The Assembly Of Lower Canada

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## *Résumé*

La "Question Juive" remonte au Canada à 1738 où elle devint un véritable problème. Toutefois on ne peut dire que le Canada ait connu les controverses et conflits de l'Europe et d'ailleurs. Un fait notoire s'est inscrit dans les annales de l'Histoire du Canada: La participation des Juifs dans différents milieux de la vie publique et politique; mais le problème résidait dans la prestation de serment.

Monsieur Abraham J. Arnold fait dans cet article une étude sur l'époque d'Ezéckiel Hart et sur l'élection d'un Juif à l'Assemblée du Bas Canada. Se penchant sur un point précis de l'histoire, M. Arnold soulève le problème de la prestation de serment pour tout citoyen désireux de prendre une part active au sein du gouvernement, serment qui leur assurait une certaine immunité. Mais, lorsqu'une personne prêtait serment elle prenait un engagement conformément au dogme chrétien ce qui créait un conflit de conscience pour les non-chrétiens.

Au Canada le plus célèbre épisode de l'histoire à ce sujet se situe dans les années 1807 et 1808 époque où E. Hart occupa un siège au gouvernement lui permettant ainsi de représenter sa ville natale: Trois-Rivières. Il y eut une vive polémique à cette époque et jusqu'en 1832 année où cette polémique a atteint son apogée au Québec.

Les journaux de l'époque se livrèrent un combat honnête chacun optant pour une idéologie qu'il respectait (*The Québec Mercury* et *Le Canadien*).

Autour de la personnalité qu'était E. Hart, venaient se greffer d'autres événements historiques montrant parallèlement qu'à travers le monde la lutte des Juifs pour l'obtention d'une émancipation des droits civiques et politiques se jouait. Tel fut le cas du Royaume Uni où le Parlement ayant élu 5 fois Lionel de Rothschild à la Chambre des Communes ne l'y fit siéger qu'en 1858. L'application des droits pleins et entiers dans le Bas Canada ne devint une réalité qu'en 1837, à la veille du soulèvement du Bas

Canada.

Dans le document qui suit, l'auteur expose les faits et événements relatifs à cette période de l'Histoire du Canada que l'on pourrait intituler la "période Hart".

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The "Jewish Question" first became an issue in Canadian history when a young man called Jacques La Fargue reached Quebec City in September 1738 aboard the French vessel Saint-Michel. When La Fargue was discovered to be a woman, Esther Brandeau, and a Jew, at that, she was immediately arrested because non-Catholics were barred from the colony of New France. After all attempts to convert her to Christianity failed, she was deported back to France.<sup>1</sup>

In Canada the Jewish question has never produced the controversy and conflict which it has engendered throughout Europe and the Near East over many centuries. From time to time however, it has emerged as a problem in the context of Canadian history. A significant area where it has occasionally aroused concern is in the holding of elective and public office.

The demand that Jews take an oath which was against their religious beliefs was the end product of a problem in world history dating from the beginning of the feudal era. During the political upheavals which prevailed in Western Europe for several centuries, from about the year 650 C.E., landowners were obliged to form self-defense associations. To join such an association it became necessary to take an oath which a conscientious Jew could not possibly take, one based on Christian dogma; he was therefore without protection from roving bandits or predatory neighbours. Jews who held to their religion were thus forced out of the land-owning class.<sup>2</sup> The custom of oath-taking spread until it became a recognized Christian ceremony. In some countries a special degrading form of oath (*more judaico*) was established for Jews who had to appear in court, and the Christian oath became compulsory for acquiring land.

The Jews began to return to England during the Cromwell era and they gradually acquired greater freedom except in the holding of public office or crown land grants, where the Christian oath prevailed. By the time Jews began to settle in Canada the British Parliament had passed a special naturalization act for foreign Protestants, Quakers and Jews residing in the colonies which allowed the exclusion from the oath of allegiance of the words "on the true faith of a Christian." Persons so naturalized however

were barred from public office or crown land grants “within the Kingdoms of Great Britain or Ireland.”<sup>3</sup>

The best known episode of Canadian history involving Jews and the oath concerns the election of Ezekiel Hart to the Assembly of Lower Canada in 1807 and again in 1808, and his expulsion in 1808 and 1809.

Ezekiel Hart’s election to the Quebec Assembly virtually coincided with the election of Jacob Henry to the House of Commons of North Carolina in 1808 and 1809.<sup>4</sup> Moreover Jewish efforts to achieve equal rights in Quebec came to a climax in 1832,<sup>5</sup> just a few years after the Jews of Maryland achieved success in their campaign for equality.<sup>6</sup>

The electoral experiences of Hart and Henry, and the petition campaigns conducted by the Jews in Lower Canada, and in Maryland, may be compared with the nineteenth century struggle of the Jews for civil and political emancipation in Europe.

It has been frequently pointed out that after the legislation in favour of the Jews was adopted in Lower Canada in 1832, it took another 25 years until Britain adopted legislation allowing Jews to sit in the United Kingdom Parliament. Lionel de Rothschild had been elected five times to the House of Commons but he was unable to take his seat until 1858.<sup>7</sup> Moreover, in North Carolina, when the Legislature permitted Jacob Henry to hold his seat, they did not extend the privilege to executing office. It was not until the 1868 Reconstruction Convention in that State, that Jews gained the right to hold any office. In Lower Canada the exercise of full rights by the Jews was not granted in practice until the eve of the 1837 rebellion. In North Carolina the liberal atmosphere of the post civil war reconstruction era contributed to the granting of political rights to Jews. In the case of the British Parliament, the long unyielding position in the face of the repeated re-election of a Jewish member may be attributed to the intransigent attitude of the privileged classes represented in the House of Lords. The House of Commons, had, over a period of years, passed a number of bills which would permit Jews to sit in parliament but these were regularly rejected by the Upper House prior to 1858.

The record of Ezekiel Hart’s election to represent his home town of Trois Rivières and his expulsion from the Assembly exposes the use of the Jewish question by the contending forces of the day.

The French-Canadian writer Benjamin Sulte has described the first occasion of Ezekiel Hart’s election on Saturday, April 11, 1807.<sup>8</sup> It was a by-election and there were four candidates: Matthew Bell, Thomas C. Coffin, Pierre Vezina and Ezekiel Hart. Bell and Coffin, leaders of the

English speaking population were hostile to Hart's candidacy. The other sitting member, Judge Foucher, opened the election day proceedings with a long discourse in favour of Thomas Coffin. He ridiculed Hart for his pretensions to a political career, for his physical stature and for his religion. The only response to Foucher's attack came from Benjamin Hart, one of Ezekiel's brothers.

The voting went much more quickly than had been expected. At the end of the first vote, by a show of hands, Vezina was the low man and resigned in favour of Coffin. There were 116 voters all told and when the second vote was counted the result was Hart 59, Coffin 41, and Bell 16.

Hart had not expected such a quick success and was greatly embarrassed when the returning officer asked him to sign the documents to validate his election.

"I cannot perform a servile act on the Sabbath", he said. "Let us wait until the sun sets."

On being pressed however he overcame his aversion and read the document. Perceiving the words "in the year of our Lord 1807", he was again moved to refuse. Finally he signed simply "Ezekiel Hart, 1807."

It has been suggested that Hart was elected by the French Canadian majority of Trois Rivieres who saw him as the alternative to the English candidates, but in the Assembly, the French Canadian majority used his Jewish religion to expel him because he was an English ally. This is an oversimplification since Vezina, a French candidate resigned in favour of Coffin who was also supported by Judge Foucher. Immediately after the election the defeated candidates began working to unseat Hart and much controversy was provoked among the people of Trois Rivieres.

The *Quebec Mercury*, the English language newspaper supported Hart and claimed the election result proved the absence of religious prejudice.<sup>10</sup> This belied the actions of Hart's opponents, Coffin and Bell, who claimed that a Jew could not take part in a Christian assembly. Moreover, the French language newspaper, *Le Canadien*, also challenged Hart's election, claiming he achieved his victory by bribery and that his election was not due to the absence of prejudice, but rather to a special influence among the voters much stronger than their feeling of duty towards their country.

This was the beginning of an anti-Semitic campaign in *Le Canadien* which claimed . . . "a man of any other nation, upon moving to another country will assimilate with the nation among whom he lives, or at least his children will assimilate, but a Jew never joins with any other race." It

was alleged to be “a religious duty” of the Jew “to keep himself separated from other people.” Considering all this, *Le Canadien* asked, “how can a Jew who thinks of no one but himself and his sect be charged with representing the interests of all the people, and how can one expect such a man to work for the general good of all.”<sup>11</sup>

*Le Canadien* conceded that the people of Trois Rivières were entitled to all the rights provided by law. In making “such an extraordinary choice” however the rights of the voters were alleged to be in conflict with the rights of the Province as a whole.<sup>12</sup>

The next session of the Assembly began at Quebec on January 29, 1808. On the opening day, immediately following the Governor’s message, the House was informed by Mr. Berthelot that Ezekiel Hart had taken the oath and was waiting to be admitted. When asked whether Mr. Hart took the oath in the customary manner, Mr. Berthelot replied that he took it on the Bible, his head being covered. This was confirmed by Mr. Turgeon, another member.<sup>13</sup>

When the House met again on February 1st, a motion was introduced by Jonathan Sewell, the Attorney General, seconded by Mr. Justice DeBonne, stating that Ezekiel Hart “hath not taken the oath in the customary manner.”<sup>14</sup>

On February 9, the plot began to thicken. Mr. Frobisher, another member of the House, presented a petition in behalf of Thomas Coffin, contesting Ezekiel Hart’s right to a seat because he “is of the Jewish religion and is therefore not capable of being elected to serve in the House of Assembly or of taking the oaths required or sitting or voting in the Assembly.” Coffin’s petition suggested that the votes for Hart “ought to be considered as null and void . . . and that the petitioner having a majority of legal votes may take his seat in the Assembly as representative of Three Rivers.”<sup>15</sup>

Three days later a petition by Ezekiel Hart was presented to the House by Mr. Mure, an English member, who moved that it be considered, seconded by a French member, Mr. Berthelot. This led to the first recorded division on the Hart issue and by a vote of 24 to 9 the Assembly agreed to hear the petition. (It is significant that Thomas Coffin’s petition was heard without the formality of a motion).

Ezekiel Hart stated in his petition that he took the Oath “as prescribed by statute” to qualify him “to a seat in this House.” He declared that the Oath was administered to him “in a conscientious and lawful manner” nevertheless he would “not object to have the same readministered to him

in the usual form", so that he might be able to take his seat.<sup>16</sup>

The Hart petition was referred to the Committee of the whole house where it was discussed for three successive days. On the third day the house resolved: "That the manner in which the said Ezekiel Hart, Esquire, took the said Oath is that practised in Courts of Justice when Oaths are administered to persons professing the Jewish religion." The members were also asked to inform the house on "the religious profession of Ezekiel Hart, Esq."

The following discussion then ensued.

Mr. Mure reported that "Hart informed him personally that he was brought up in the profession of the Jewish religion and that he was still of that persuasion."

Mr. Mondelet told the House of a recent conversation with Mr. Hart in which the latter avowed his profession of the Jewish religion even after "soliciting to be permitted to take his seat in the House and since he took the oath."

Mr. Justice Foucher advised the House that he had known Ezekiel Hart "to be a Jew from the beginning of the year 1803: that he follows the Jewish customs and that in the Courts of Justice he never took the oath but in the form that is taken by Jews." Foucher added that Hart had recently requested the privilege "of not being summoned to appear in the Courts of Justice on Saturday, it being his Sabbath day and that of the Jews."<sup>17</sup>

The Assembly then resolved: that Ezekiel Hart, "is of the Jewish profession of religion," and the he "be heard at the bar" on the legality of his pretensions to take his seat in this House."<sup>18</sup>

On Friday, February 19, 1808, Ezekiel Hart appeared at the bar of the House but the details of the proceedings are not recorded in the Journals of the Assembly.<sup>19</sup>

The next day the Assembly took its first direct action against Hart in a motion stating "that Ezekiel Hart, Esquire, professing the Jewish religion, cannot take a seat nor sit nor vote in this House."

Mr. Justice Foucher who had opposed Hart from the outset moved the motion which was approved by 21 to 5.<sup>20</sup>

This was the last time that the Hart matter came before the Assembly in the session of 1808. A recorded vote was not taken on the resolution barring him from a seat, so that it is not known who voted for, and who voted against. Furthermore the Journal of the Assembly does not include details of the debate.

After the matter was concluded however, *Le Canadien* carried an extensive report headed “Debats au Sujet de M. Hart, Juif.” Those who took part in the debate included Jonathan Sewell, the Attorney General; John Richardson; John Mure; Ross Cuthbert and Pierre Bedard. Most of the space is give over to the views of Bedard.

The Attorney General declared it unnecessary to decide whether a Jew might sit in the House of Assembly. Only the oath question had to be considered he said, claiming that all oaths of office were to be taken on the evangelical scriptures. Jews were permitted to take the oath on the Old Testament in the courts of justice only as a necessity. However, there was no special need for a Jew to have a seat in Parliament, according to Sewell.<sup>21</sup>

Mr. Richardson asserted that Jews had all the privileges of subjects born in the American colonies by virtue of the statute on naturalization of aliens in the colonies which permitted taking the oath of allegiance without saying “on the true faith of a Christian.” The oath was therefore not objectionable; the Assembly had only to decide whether a Jew might sit in the House. He cited another statute as confirming the earlier one by removing doubts that those naturalized had the right to hold any civil or military office or to acquire land, except within the Royal Kingdom. Richardson said that the Lord Chancellor had given the King a similar opinion therefore anyone so naturalized was qualified to vote and to be elected as a member of the Assembly. Richardson added that if a naturalized Jew had the privilege of sitting in the Assembly, there was even stronger reason for a Jew who is a natural born subject to have this right.<sup>22</sup>

Mr. Mure and Mr. Cuthbert concurred with Mr. Richardson and emphasized the need to set aside any prejudice against the Jews and to determine the issue on the question of law.

The Attorney General returned to the debate to cite a section of Canon Law that the oath had to be taken on the Holy Gospel as confirmed by yet another statute. No other act had since been passed to exempt the Jews, he claimed.<sup>23</sup>

The most significant statement in the debate was undoubtedly made by Pierre Bedard. He conceded that by statute a Jew could hold a seat in the House of Assembly. The later act cited by the Attorney General had made some change in the form of oath but this did not prevent Jews from taking advantage of the previous act, which granted them general permission to take the oath according to their conscience.

Nevertheless Bedard did not agree that Jews could be permitted to sit in the Assembly, despite the laws in their favor. He had no doubt that they should not have this privilege. The statute cited by Richardson, said Bedard, was for persons resident seven years in the American colonies who were considered of as good repute as natural-born subjects and he quoted the original English wording of the act as follows: They "shall be deemed adjudged and taken to be His Majesty's natural born subjects of this Kingdom to all intents, instructions and purposes as if they . . . *were born within this Kingdom.*"

He claimed that the interpretation of the law in relation to an actual case depended on the importance attached to the last words which he stressed.

As for determining the privileges for the Jews in particular: is it possible to imagine, he asked, that the statute would place naturalized Jews in a better position than Jews born in the kingdom? He considered it certain that Jews born in any colony could not be admitted to a seat in the Assembly or to any parliament in any British dependency.

Recounting the past status of the Jews he pointed out that before the Jews were expelled from England, they never enjoyed citizens' rights. They were always regarded as chattels of the king, who had the right to imprison or sell them at will. After they were recalled by Oliver Cromwell, they were not accorded a single new privilege and again depended on the King's discretion. Bedard referred to the effort made on one occasion to improve the status of the Jews by an act of Parliament but this act only lasted a few months.<sup>24</sup> Moreover, he stated, their circumstances were no better in other Christian countries; nowhere were they accorded the rights of citizens. This was not intended as an injustice because they did not want to be citizens of any country, Bedard claimed.

The Jews, Bedard declared, spread among all countries because they wanted to be in many places but they never regarded any country as their own. He asserted that the Jews were compelled by their belief to act thus because they were waiting for the Messiah, and while waiting they could not give allegiance to anyone else.

From all this he concluded that a Jew born in the Royal Kingdom could not sit in any colonial parliament and that Jews naturalized by act of Parliament should not have any greater rights.

But the person in question, Bedard added, was a Jew born in a colony and he did not have to take recourse to the law. The honorable members were relying on the law to establish the case in favor of Jews born in the

colonies, but it seemed to him impossible, no matter what reasoning one employed, to prove that the rights of the Jews born in the King's dominions could be strengthened by a statute which spoke only of naturalized subjects. He agreed that it was absurd that a Jew born in the colonies would have less rights than a naturalized Jew but he concluded that the law in question had not given greater rights to naturalized Jews than to Jews born in the colonies.

Mr. Richardson called Bedard's argument a sophism; clever but fallacious reasoning which would reduce to naught the rights of native born Jews. Bedard's interpretation, Richardson stated, was contrary to that given to the King by government officials. A Jew born in the British colonies was a native born subject the same as all other subjects, and it was the right of all natural subjects to be able to be elected as members of the Assembly.

Messrs. Richardson, Mure and Cuthbert repeated their argument that the statutes provided that all naturalized persons, and consequently Jews as well, had the right to hold any office or civil or military post, excepting only those within the Kingdom and therefore Jews were capable of taking a place in the Assembly.

The opposition countered that the term "civil and military offices" did not necessarily include a place in the Assembly because the positions referred to were those ordinarily granted by the Crown. It should not be assumed that the Parliament of Great Britain wanted to give Jews the right to make laws for Christians and that this right could not be granted merely by implication. The term "civil and military offices," they claimed, did not include a place in the legislature. There was nothing in the act of parliament granting such an extension and this seemed thoroughly evident by a clause of exclusion calling for insertion in every act of naturalization in addition to the term civil and military posts in the Kingdom, the exception, in so many words, or places in parliament.<sup>25</sup>

The arguments advanced against Ezekiel Hart's right to a seat in the Assembly by Pierre Bedard and company were based largely on their interpretation of British law. Bedard however also used the hoary myth about Jews being unable to give their allegiance to any country, reminiscent of arguments advanced against the emancipation of the Jews in Europe after the French revolution.<sup>26</sup>

Significantly the English members in the House were divided on the oath question and on the seating of Ezekiel Hart. The Attorney General, Jonathan Sewell, who opposed Hart, was more representative of British

ruling interests than of English speaking Canadians. He was soon to leave the Assembly to become Chief Justice of Lower Canada, President of the Executive Council and Speaker of the Legislative Council. John Richardson, who led the supporters of Hart, was a leader of the Montreal merchants and had fought against the recognition of French as an official language when the Assembly met for the first time some 15 years earlier. Pierre Bedard was not only the leader of the French party in the Assembly, but also founder of *Le Canadien*, the first French newspaper.

The 1808 session of the Assembly was dissolved by the Governor General, Sir James Craig on April 14. A general election was called for May 17, but the new Assembly was not called into session until April 10, 1809.

Ezekiel Hart was again a candidate in Three Rivers and was re-elected with virtually the same number of votes as in 1807. This time however, with 58 votes, he came second to Joseph Badeaux who was elected in first place with 67 votes. Hart defeated the sitting member, Judge Foucher and Pierre Vezina who had also lost in 1807.<sup>27</sup>

When the new session opened the following April, Hart took his seat in the Assembly without incident and took part in some of the early proceedings. In the election for speaker, he voted against J. A. Panet, the French candidate who was elected.<sup>28</sup>

On April 17, a week after the House opened, four French members J. M. Mondelet, Louis Roi, Joseph Plante and J. B. Durocher joined forces to present a resolution recalling the decision on Ezekiel Hart at the last session, pointing out that Hart was back "and is now sitting . . . as a representative for the borough of Three Rivers." The second debate on Ezekiel Hart's qualifications was underway.<sup>29</sup>

On April 19, the Assembly got bogged down in procedural difficulties. John Mure, seconded by Mr. Justice De Bonne proposed naming a seven-man committee to examine the journals of the British House of Commons for precedents on expulsion or on persons declared ineligible where such persons were re-elected. This proposition was defeated in a recorded vote of 27 to 12.

The House then agreed to review the circumstances in which Hart was kept out during the last session. After this information was presented, Mr. Justice De Bonne moved adjournment. Feeling had become so high that a recorded vote was demanded. Hart was among those who voted for adjournment but the motion was defeated.

Mr. Mondelet now returned to the attack with a resolution stating that

Ezekiel Hart “was declared incapable of sitting and voting in the last session as he professed the Jewish religion.” This motion was carried by a vote of 35 to 5.<sup>30</sup>

On Monday, April 24, a bill was brought before the House and read for the first time, proposing “to remove doubts respecting the eligibility of persons professing the Jewish religion to sit or vote in the House of Assembly.” The bill was introduced by John Blackwood, an English member, and seconded by Joseph Turgeon, a French speaking member.<sup>31</sup>

On Friday, April 28, Ezekiel Hart’s status and the bill on the eligibility of Jews were both debated. Action on Hart was postponed. The eligibility bill passed second reading but action on referral to a five-man committee was postponed.<sup>32</sup>

The House returned to a detailed consideration of Hart’s position on Tuesday, May 5. Mr. Mondelet made a motion calling on those members who had attended the swearing in of Ezekiel Hart to “inform the House how he took the said oath.” Mr. Mure, seconded by Mr. Blackwood moved for postponement but this failed and the original motion passed, 17 to 10.

Mr. Bourdages and Mr. Duchesnay then informed the House that they were present when Hart took the oath and “that the head of the said Ezekiel Hart was uncovered and his hand on a book.” The same book had been presented to Mr. Blackwood to be sworn in. The latter asked what book it was and was told “it is the New Testament.” Mr. Blackwood then “kissed the book and presented it to Mr. Hart who kissed it also.”

Mr. Mondelet then moved, seconded by Mr. Martineau, that Ezekiel Hart, who professed the Jewish religion, took the oath at the opening of the present session “on the Holy Evangels which could not bind him and did thereby profane the religious institution thereof, cannot take a seat, nor sit, nor vote in this House.”

At this point, Pierre Bedard moved an amendment, seconded by none other than Louis Joseph Papineau, the younger, who had been elected to the Assembly for the first time. Bedard’s amendment simply asked for a declaration that Ezekiel Hart “professing the Jewish religion . . . cannot sit nor vote in this House.”

Two English members, James Cuthbert and Mr. Mure moved deferral of the Mondelet resolution and the Bedard amendment to allow time for Ezekiel Hart to be informed of these developments. This move was defeated as was a second motion for simple adjournment. Bedard’s amendment was then passed by 18 to 8.<sup>33</sup>

The next day, an attempt was made to modify the Hart decision in a motion by Joseph Plante, seconded by Michel Caron, calling for the proceedings of the previous day to be rescinded and to be replaced with a resolution stating that Hart could not sit or vote in the House until “he can make it appear that he hath embraced the Christian religion at the time he was elected . . . to serve in the present parliament.”

John Mure, seconded by Justice De Bonne, moved an amendment to eliminate the intent of the Plante motion and reverse the expulsion resolution. Mure’s amendment, really a new motion, proposed that Ezekiel Hart “having been duly returned as a member of this House for the Borough of Three Rivers and having taken the oath required has a legal and constitutional right to sit and vote therein.” This proposition was defeated by 16 to 6, and Plante’s original motion was then overwhelmingly defeated.<sup>34</sup>

Ezekiel Hart’s seat was formally vacated on Monday, May 8. On the same day, the Blackwood proposal to refer to a committee the bill on the eligibility of Jews for election to the Assembly was defeated.<sup>35</sup>

On May 15, Governor General Craig made a surprise appearance in the House, dissolved the Assembly and expressed displeasure with certain of its actions.<sup>36</sup>

When Craig dissolved the Assembly the previous year, (April of 1808) he was full of praise for the work of the members and there was nothing to suggest that he was displeased or dissatisfied with any of its activities except one, the action to exclude judges from the Assembly.

Governor Craig is supposed to have been a great friend of Ezekiel Hart and is alleged to have intervened in his favor in 1808. This is one of the myths of Canadian Jewish history. The fact is that after Hart directed a personal appeal to Craig following his first expulsion, the governor responded rather coldly through his secretary who wrote that Craig did not think it “expedient” to interfere “with the proceedings which the House of Assembly has thought proper to adopt in your case.”<sup>37</sup>

During the summer of 1808 Governor Craig was getting to know his subjects and on August 5, he wrote to Lord Castlereagh, the Colonial Secretary in London expressing concern that . . . “The Canadian Party hangs so completely together” and are so influential “that I shall not be surprised if they adopt some resolution which may put me under the necessity of dissolving them.” They seem “to believe that there exists a Ministry here and that in imitation of the Constitution of Britain that Ministry is responsible to them for the conduct of Government.”<sup>38</sup>

Craig foresaw the coming conflict with the Assembly because the "Canadian Party" (read "French Canadian") was already thinking in terms of responsible government. He predicted that he would find an excuse to dissolve the House in some future action of the coming Assembly.

In addition to the second unseating of Ezekiel Hart and the bill on the eligibility of Jewish candidates (which had passed second reading) the House had been considering a bill to bar judges from the Assembly. This Act was ready for third reading when Craig proclaimed dissolution.<sup>39</sup>

Before exercising his dissolution prerogative, Craig asked the Legislative Council for an opinion regarding the eligibility of Jews to sit in the Assembly. The Upper House advised him that "a Jew may be elected to the . . . Assembly . . . and may sit and vote upon taking the oaths required by law in the customary manner."

The Council told the Governor General that as far as possible he should stop the Assembly "from assuming any power beyond what is allowed to them by the constitution" and that the expulsion of a member upon any principle of "general" disqualification not covered by statute would be an unwarranted assumption of power.

The councillors added however, that the Governor should not immediately dissolve the Assembly "if by vote only they should expel a Jew without assigning any other reason except that he is of the Jewish religion," and that dissolution for this cause only "ought for the present to be suspended." They further urged that before deciding on a course of action the Assembly's error "in point of law" should be established by the opinions of the highest legal authority in England. Only "a willful instance of a similar expulsion" after the recommended steps had been followed would justify the dissolution of the House.<sup>40</sup>

Incidentally, the committee of the Council which prepared the report on the eligibility of Jews was headed by the Speaker, Jonathan Sewell, now the Chief Justice of Quebec, who a year earlier as Attorney General had opposed the seating of Ezekiel Hart in the Assembly on the grounds that he could not take the proper form of oath. It would appear that Sewell as Chief Justice had taken a different position on the right of Jews to sit in the Assembly than he did previously as Attorney General.

In fact, the Upper House cited the same statute to support the seating of a Jew in the House of Assembly which Sewell had used as Attorney General to argue that there was no special oath provision for the Jews in regard to holding a seat in the Assembly.<sup>41</sup> Actually while the Upper House asserted that a Jew may sit and vote in the Assembly upon taking

the oaths required by law, it did not say that a Jew might qualify by taking the Jewish form of oath. In fact, the council's report commented that since the Assembly expelled Hart in 1808 "because he professed the Jewish religion' and for no other cause" therefore the present House "has the sanction of a precedent." Considering that the council's main advice to the Governor was to seek the opinions of the highest legal authority in England, it cannot really be concluded that Sewell, as Chief Justice was taking an entirely different position from that which he took previously as Attorney General.

The other member of the Upper House who merits particular attention is Pierre A. De Bonne, the same Judge De Bonne who was the immediate target of the effort to pass legislation barring judges from membership in the Lower House.

Governor Craig did not heed the advice of the Legislative Council to ask London for a legal opinion on the expulsion of Ezekiel Hart. He proceeded to dissolve the House on May 15 in a peremptory manner, telling the members they had wasted their time "in fruitless debates excited by private and personal animosities or by frivolous contests upon trivial matters of form." He accused the House of neglecting "matters of moment and necessity" and he charged the members with "acts which appear to be unconstitutional infringements on the rights of the subject, (and) proceedings which amount to a dereliction of the first principles of natural justice . . ." He called their conduct "detrimental to the best interest of the country" and claimed he was compelled to take recourse to dissolution as "the only constitutional means by which its recurrence may be prevented."<sup>42</sup>

*Le Canadien* suggested that Craig's charge of "unconstitutional infringements of the rights of the subject" was a reference to the Ezekiel Hart expulsion. The French newspaper recalled that Craig had not reacted violently when Hart was expelled the previous year and had nothing but praise for the Assembly on closing of the 1808 session. The accusation of "dereliction of the first principles of natural justice" referred to rejection of the opportunity for Hart to prove whether he had in fact become a Christian, according to *Le Canadien*. It was recalled that Hart had been present in the chamber from the start of the 1809 session and during the first discussion of his status. He therefore had sufficient opportunity to inform the Assembly that he had become a Christian, if this was indeed the case.<sup>43</sup>

The possibility of Hart's conversion arose when it was disclosed that he had taken the oath on the Christian Gospel. B. G. Sack has argued that Hart would hardly have gone out of his way "to gratify personal ambition

by taking the oath of a non-Jew,” and he endeavors to cast doubt on the Journals of the Assembly.<sup>44</sup>

It may be suggested, however, that Hart was prepared to overcome his religious scruples on the oath without becoming a Christian. It should be recalled that when he first ran for public office it was on a Saturday and was thus a violation against the Jewish Sabbath. When the election was completed before sundown, and Hart was asked to sign the necessary documents, he was embarrassed about breaking the orthodox proscription against writing on the Sabbath but once again he overcame his scruples. It is therefore quite likely that, on entering the Assembly a second time, he did make a further concession to expediency by taking the oath on the Gospels in the hope that this would enable him to retain his seat. The record shows that this did happen and there is no apparent evidence to the contrary.<sup>45</sup>

During the time when the Hart question was debated however, *Le Canadien* really devoted more space to the attempts to unseat the judges. Moreover the analysis of Craig’s dissolution address was the beginning of a campaign to defeat the Governor’s supporters in the next election.

After dissolving the legislature Craig had to report to London on his action. Writing to Lord Castlereagh on June 5, 1809, he sought to justify the decision by expounding mightily about the strength and influence of the “Canadian Party” and his prejudice against them becomes more clear.

The expulsion of Ezekiel Hart is cited along with the action against the judges as his main excuses for the dissolution, but most of his dispatch is devoted to the question of the judges, thus demonstrating its greater importance.<sup>46</sup>

Castlereagh’s reply to Craig, no doubt surprised the Governor General and caused him considerable chagrin, for he was plainly told that his attitude and action towards the Assembly did not meet with the approval of the authorities in London. A short official communication was accompanied by a longer private message in which the Colonial Secretary detailed his views. The official communication suggested that in future the Governor should “take care to use all such temperate and chosen language as may not leave it in the power of the Legislative Assembly . . . to question the propriety of your sentiments . . .”<sup>47</sup>

In his private letter, the Colonial Secretary told the Governor that he “should not advert to any particular proceeding of the Assembly that is not clearly unconstitutional and illegal.”

With regard to the two grounds of complaint specified by the Governor,

Castlereagh stated that in the matter of the judges he was not “by any means persuaded that the regulation would be an unfit one in itself” and he felt the Assembly did have a right “to appoint a committee to examine the inconvenience which arose from judges canvassing at elections.”

In the matter of the expulsion of Ezekiel Hart, Castlereagh stated: “. . . it was obvious that a real Jew could not sit in the Assembly as he could not take an oath upon the Gospels.” It was therefore within the competence of the Assembly to inquire whether Hart had taken all the necessary steps “to prove his bona fide conversion to Christianity and that he took the oath without mental reservation.”

Craig was further told that the expressions in which he conveyed his sentiments to the Assembly “have created some Sensation here . . .” He was advised that if a new Assembly would comment on his speech dissolving the last House “you will avoid any expression which can be construed as touching in any degree upon their supposed Privileges and the general Freedom of Inquiry and Debate.” On the matter of excluding judges, Castlereagh added “there is no Repugnance felt here to the Measure should you at any time see it right to acquiesce in it . . .”<sup>48</sup>

The Governor General, it may be fairly concluded, was put in his place by the Colonial Secretary. Nevertheless he continued to battle the Canadian Party for the duration of his term of office, which continued for two years after Ezekiel Hart retired from the political wars.

#### FOOTNOTES

1. B. G. Sack, *History of Jews in Canada* (Harvest House: Montreal, 1965) pp. 6-9.
2. Solomon Grayzel, *A History of the Jews* (Jewish Publication Society: Philadelphia, 1957) pp. 308, 309.
3. Morris U. Schappes, *Documentary History of Jews in U.S.; 1654-1875* (Citadel Press: New York, 1952) pp. 36-30.
4. *Ibid.*, pp. 122-125.
5. B. G. Sack, p. 104.
6. Leo W. Schwartz, (ed.), *Great Ages and Ideas of the Jewish People* (Random House: New York, 1956) p. 231; also Morris U. Schappes, pp. 139-41 and pp. 601-2.
7. Cecil Roth, *Essays and Portraits in Anglo-Jewish History* (Jewish Publication Society, Philadelphia, 1962) p. 280; also Leo W. Schwartz, ed., p. 322.
8. Benjamin Sulte, *Pages d'Histoires du Canada*, (Granger Freres: Montreal, 1891) p. 412-415.
9. *Ibid.*, pp. 413-414.
10. *Ibid.*, p. 414.
11. *Le Canadien*, April 18, 1807, pp. 86-87.
12. *Ibid.*
13. Lower Canada House of Assembly, *Journals*, Jan. 29, 1808.

14. *Ibid.*, Feb. 1, 1808, p. 38.
15. *Ibid.*, Feb. 9, 1808, p. 60.
16. *Ibid.*, Feb. 12, 1808, pp. 72, 74, 76.
17. *Ibid.*, Feb. 15, 16, 17, pp. 106, 114, 116, 118, 120.
18. *Ibid.*, Feb. 17, p. 122.
19. *Ibid.*, Feb. 18, 1808, p. 128.
20. *Ibid.*, Feb. 20, 1808, p. 144.
21. *Le Canadien*, Mar. 2, 1808, p. 57.
22. *Ibid.*; Statutes referred to include: 13, Geo. II, Chap. 7; and 13, Geo. III, Chap. 25.
23. *Ibid.*; pp. 57, 58; Statute referred to: 6, Geo. III, Chap. 53.
24. The Jews Bill, an Act allowing foreign Jews living in Great Britain or Ireland to apply to Parliament for naturalization after three years, without taking the sacrament passed by British House of Commons, May 1753, repealed, Dec. 1753.
25. *Le Canadien*, Mar. 2, 1808, pp. 58, 59; Statute referred to 12, Wm. III, Chap. 2.
26. H. Graetz, *History of the Jews* (Jewish Publication Society, Philadelphia, 1895) Vol. V, pp. 453, 454.
27. *Le Canadien*, May 21, 1808, p. 109.
28. *Le Canadien*, April 15, 1809, p. 89.
29. Lower Canada House of Assembly, *Journals*, April 17, 1809, pp. 76, 78.
30. *Ibid.*, April 19, 1809, pp. 106, 108, 110, 112.
31. *Ibid.*, April 24, 1809, p. 140.
32. *Ibid.*, April 28, 1809, p. 200.
33. *Ibid.*, May 5, 1809, pp. 242, 244, 246, 248.
34. *Ibid.*, May 6, 1809, pp. 250, 252, 254.
35. *Ibid.*, May 8, 1809, pp. 264, 266, 268.
36. *Ibid.*, May 15, 1809, pp. 302, 304, 306, 308.
37. J. P. Wallot; *Juifs Et Canadiens, Deuxieme Cahier Du Cercle Juif*, Montreal, 1967, pp. 114, 115.
38. W. P. M. Kennedy, (ed.) *Documents of the Canadian Constitution 1759-1915* (Oxford University Press; Toronto, 1918) p. 250.
39. *Le Canadien*, May 27, 1809, p. 115.
40. From a report of a meeting (May 10, 1809) of the Legislative Council regarding the expulsion of Ezekiel Hart, as reprinted in *Canadian Jewish Archives*, Vol. 1, No. 5, August, 1959, pp. 21, 22, 23.
41. Statute 13, Geo. II, Chap. 7.
42. Lower Canada House of Assembly, *Journals*, May 15, 1809, pp. 304, 306.
43. *Le Canadien*, June 10, 1809, p. 125.
44. B. G. Sack, p. 89.
45. Lower Canada House of Assembly, *Journals*, May 5, 1809, p. 244.
46. W. P. M. Kennedy, pp. 250-253.
47. *Ibid.*, p. 254.
48. *Ibid.*, p. 254, 255.