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ISSUED QUARTERLY AT PROVIDENCE, RHODE ISLAND

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EXHIBITION OF MINIATURES

July through September

BEETLES AWAY!

Photograph by Joseph M. Latham
Camera Club of the Rhode Island Engineering Society
[reproduced on front cover]

*Annual race between the Peppy Pappies (Edgewood Yacht Club) and the
Tired Fathers (Barrington Yacht Club) on the waters of Narragansett Bay.*

RHODE ISLAND HISTORY

VOL. 13

JULY, 1954

NO. 3

STRANGERS

Civil Rights of Jews in the Colony of Rhode Island

by DAVID C. ADELMAN*

IN 1954 Jews will celebrate the tercentenary of their settlement in the United States and the Congregation Sons of Israel and David (Temple Beth-El) in Providence, its centennial. This paper is a result of research in preparation for the celebration of both occasions.

Jews owe no greater debt of gratitude to any man in the history of the United States than to Roger Williams. In Providence he put into practice the doctrine of separation of Church and State (which others had preached before him) and was one of the most warm-hearted, generous, and liberal Christians who ever befriended the persecuted. While on a mission to England he published many statements favorable to the readmission of Jews into England and used his influence to that end. In appreciation of Williams and in memory of his father, Isaac Hahn, the first Jew to be elected to public office in Rhode Island (1884), Judge J. Jerome Hahn in 1928 conveyed to the City of Providence the Roger Williams Spring on North Main Street and the land surrounding it.

Five years after the founding of Providence Plantations the General Court of the Island towns ordered "that none bee accounted a delinquent for Doctrine, provided it be not directly repugnant to the Government or Lawes established." This provision is the distinguishing feature of the founding of Providence in the careful discrimination between liberty of conscience and contempt of law, which Williams enlarged upon in his famous parable-of-the-ship letter. Although the colony voted that "all men whatever nation soever they may be, that shall be received inhabitants of any of the towns, shall have the same privileges as Englishmen, any law to the contrary notwithstanding," they also voted that no-foreigner was to be received

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a freeman in any town but by consent of the legislature.¹ None but a freeman could vote or hold civil office, rights which passed to the freeman's eldest son. Although it has been stated many times that Abraham Campanall was "licensed a freeman" in 1688, the statement is incorrect. No Jew was ever admitted a freeman in the Colony of Rhode Island, and therefore no Jew had the right to vote or hold office. This disability persisted until 1843, when the state adopted its first constitution after the Dorr Rebellion.

The statute of Westminster, passed by Parliament in 1740, granted Jews the right of naturalization after seven years' residence in the colony and provided a special oath agreeable to Jews. Although it has been stated that James Lucena, a Jew, was naturalized in 1761, and Moses Lopez even earlier, original documents show that Aaron Lopez (later the most prosperous Jew in the colony) was denied naturalization in 1761 while James Lucena was naturalized as a Christian. Moses Lopez was granted a patent to make potash and was excused from civil duties because of services rendered, but he was never naturalized in the colony.

Williams wrote extensively, but nowhere does he mention the right to vote or hold office.² His principles, however, precluded the denial of such rights upon religious grounds. "It is the will and command of God," he wrote, "that . . . a permission of the most Paganish, Jewish, Turkish, or Antichristian consciences and worships, bee granted to all men in all Nations and Countries: and they are onely to bee fought against with that Sword which is only (in Soule matters) able to conquer, to wit, the Sword of God's Spirit, the Word of God."³

There were no Jews in Providence Plantations in his lifetime. The denial of naturalization to Jews and the denial of their admission to the company of freemen three-quarters of a century after his death are not a reflection upon his sincerity, but rather a lesson for our own times. And that lesson is that in a government of laws and not of men we cannot rely upon constitutional forms alone. Laws are not

¹Samuel Greene Arnold, *History of the State of Rhode Island and Providence Plantations* (New York, 1878), I, 242.

²Maxwell H. Morris, "Roger Williams and the Jews," *American Jewish Archives*, III, No. 2, Jan. 1951.

³Roger Williams, *The Bloudy Tenent of Persecution for Cause of Conscience . . .* (London, 1644), *Publications of the Narragansett Club* (Providence, 1874), III, 3.

self-enforcing, but are interpreted and enforced by fallible human beings.

The preaching and writings of Williams and particularly his intercession with Cromwell for the readmission of Jews into England attracted the attention of Spanish and Portuguese Jews (Marranos, refugees from the Inquisition), who were continuously in search of a peaceful haven. In 1654 a small group of them landed in New Amsterdam and were promptly met with the hostility of Peter Stuyvesant, who ordered them to leave. They appealed to his superiors, the Dutch West India Company, among whose stockholders were Abraham and Isaac Pareira, wealthy refugees. Stuyvesant was ordered to allow them to remain. The tercentenary of that settlement will be celebrated the year commencing September, 1954.

Four years later another small group came to Newport, where the favorable attitude of the natives encouraged them to settle. They came in response to the news that in Newport they would find religious liberty and tolerance. Soon after the death of Roger Williams they experienced difficulties and petitioned the General Assembly, which passed the following resolution: "Voted, In answer to the petition of Simon Medus, David Brown, and associates, being Jews, presented to this Assembly, bearing date June the 24th, 1684, we declare, that they may expect as good protection here, as any stranger, being not of our nation residing amongst us in this his Majesty's Collony, ought to have, being obedient to his Majesty's laws."⁴

Sidney Rider questioned the date of the deed (1677), which conveyed land to Moses Pacheco and Mordecai Campanall for use of the "Jews and their Nation, Society or Friends" and thought the date was 1684, because that was the date of the Medus petition when Jews were first mentioned in the Records of the Colony and the name *Mordecai Campanall* did not appear in that record. However, the records of the General Treasurer show that one "Mordecai the Jew" and another "Moses the Jew" paid taxes to the colony in the years 1678 to 1680.⁵ Undoubtedly these are the persons mentioned in the cemetery deed of 1677, which, being a formal document under seal, contained their surnames. The acquisition of a cemetery showed that

⁴John R. Bartlett, *Records of the Colony of Rhode Island and Providence Plantations* (Providence, 1860), III, 160.

⁵Archives of the State of Rhode Island, General Treasurer's Accounts, 1672-1711. Hereafter cited as Archives.

under the heading *Persons Lycenced*.

The original record contains two lists of *Persons Lycenced*. The first list contains the same names as those mentioned by Bartlett with the addition of the names of the towns in which they resided and at the foot of the list appears the word *Retailers*. The second list, not mentioned by Bartlett, contains three names under the heading *Retailers not less than a Bottle*. Each list also contains the name of a woman. Bartlett did not state the purpose for which the fourteen persons were "lycenced," but no woman was eligible to become a freeman, and the statement that Abraham Campanall was "lycenced a freeman" was wishful thinking. One writer suggested that Abraham Campanall was licensed for some purpose not specified.⁷ He refused to take a leap in the dark and fill in Bartlett's record.

A license, by definition, is a revocable permit of a temporary and conditional nature, not transmissible. In the colony licenses were granted by the courts. Freemen were not licensed but were "admitted to the freedom of the Colony" by the General Assembly or to "the freedom of the town" by the Town Council. No freeman was admitted during the Andros administration. As an unnaturalized "stranger" Campanall was not eligible and his record did not qualify him for admission to the select company of freemen, who were masters and landholders and who were most jealous of their prerogatives. There is no question but that Campanall and the other "Persons Lycenced" on the first list were licensed to conduct a tavern and those on the second list, "Retailers not less than a Bottle," were licensed to operate what we today call a package store. No Jew, however qualified or competent, was ever made a freeman of the Colony of Rhode Island.

The question of the naturalization of Jews did not arise in the colony until almost a century after the death of Roger Williams. They enjoyed economic freedom as traders and merchants as well as religious liberty, and although they were never more than two hundred in number, they made Newport the rival and superior in trade and commerce of New Amsterdam. No Jewish community in the colonies was held in higher esteem by its Christian neighbors.

On February 26, 1761, James Lucena applied to the General Assembly at East Greenwich for naturalization, which was granted

⁷Samuel Broches, *Jews in New England* (Boston, 1943), II, 7.

the following day.⁸ Only one month later Aaron Lopez and Isaac Elizer, "Persons professing the Jewish Religion," applied to the Superior Court at Newport for naturalization. The Court referred

whatssoever. 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.

James Lucena

R. I. State Archives

JAMES LUCENA'S OATH OF ALLEGIANCE

Rhode Island, to the Honorable General Assembly of the Colony of
Rhode Island now sitting in East Greenwich in the County of
Kent
I humbly sheweth James Lucena now of Newport in the County of Newport
that some time ago he came into this Colony with his family
brought his estate with him with a Design to settle here & pray
that your Honor would be pleased to put an act for his
being Naturalized upon his taking the necessary Oaths, & as in
Duty bound will ever pray
James Lucena

1761

Top. 26. 1761

R. I. State Archives

JAMES LUCENA'S PETITION FOR CITIZENSHIP

the applicants to the General Assembly on the grounds that the Naturalization Act of 1740 referred to in the petition, was not in Court and that only the General Assembly could act upon this petition as it had in other cases.⁹ The applicants accordingly petitioned the General Assembly, which met in South Kingstown. On October 23,

⁸Archives, Petitions to the General Assembly, 1758-1761, X.

⁹Superior Court of Judicature, Newport, R. I., March Term, 1761.

1761, the Lower House granted the prayer of their petition in the following words:

... Shall be admitted a lawful Subject of his Majesty the King of Great Britain Shall have leave to purchase Lands within this Colony and that his Issue if he have any Shall be Inheritable.

But Inasmuch as the Said Aaron Lopez hath declared himself to be by religion a Jew This Assembly doth not admit him nor any other of that Religion to the full freedom of this Colony. So that the Said Aaron Lopez nor any other of said Religion is not Liable to be chosen into any Office in this Colony Nor allowed to give a Vote as a Freeman in Choosing others. [italics mine]

The Lower House was not in doubt as to its right to grant the petition, but went out of its way to admonish the petitioners that they could not vote or hold office, even though they did not ask to be admitted freemen.

The Upper House refused to concur on the ground that the Parliamentary Act provided the manner in which foreigners should be naturalized and therefore sent them back to the Superior Court. This was only eight months after the same General Assembly had passed an Act granting naturalization to James Lucena. Lopez and Elizer appeared before the Superior Court of Newport again in March, 1762, a year after their first petition, and again the Court denied their petition in a unanimous opinion, which has been universally condemned by historians.¹⁰

The fact that Lucena was naturalized by the General Assembly has no bearing upon the question of the naturalization of Jews for the reason that Lucena did not appear before them as a Jew but as a subject of Portugal and took the oath "upon the true Faith of a Christian," while Lopez and Elizer appeared as "Persons professing the Jewish Religion." Moreover Lucena represented in an accompanying petition that he could and would manufacture castile soap, thereby employing many poor people as well as furnishing "a great and valuable article of commerce for export to the continent, to the West Indies etc.," an enterprise highly beneficial to the public, and he asked for the exclusive right to do so. Just as industrialists today receive various economic advantages on similar grounds, Lucena was

¹⁰*Ibid.*, March Term, 1762. Sidney S. Rider, *An Inquiry Concerning the Origin of the Clause in the Laws of Rhode Island (1719-1783) Disfranchising Roman Catholics*, *Rhode Island Historical Tracts*, second series, no. 1, (Providence, 1889).

Upon the Petition of Aaron Lopez before this Assembly that he may be Naturalized. It is hereby granted unto the said Aaron Lopez that upon his appearing with before the Hon^d Superior Court of this Colony in before this Assembly and taking the Oath of Allegiance & Supremacy the said Aaron Lopez shall be admitted a lawful Subject of his Majesty the King of Great Britain shall have leave to purchase Lands within this Colony and that his Issue if he have any shall be Inheritable

But Inasmuch as the said Aaron Lopez hath declared himself to be by Religion a Jew. This Assembly doth not admit him to the full freedom of this Colony. So that the said Aaron Lopez is not Liable to be chosen into any Office in this Colony Nor allowed to give a Vote as a Freeman in Choosing others

And that the same be Granted to Isaac Elizer the other Petitioner being also a Jew

October 30, 1761
Newport

To the House of Mag^{ts}
Resolved that the above written order be an Act of this Assembly
Wm. Jones Secy of the Assembly

R. I. State Archives

GENERAL ASSEMBLY'S DECISION ON LOPEZ' AND ELIZER'S PETITION FOR CITIZENSHIP

granted not only the right to exclusive manufacture of castile soap but also naturalization.

In its opinion the Court held that the Naturalization Act of 1740 was designed for increasing the inhabitants in the Plantations, but the Colony was already so full that some had removed to Nova Scotia and other places. This reason is absurd. Lopez and Elizer were already residents and intended to remain. Denial of their petition did not affect the population one way or another. The Court went on to say that by the charter granted the Colony, it appeared that the "free & quiet Enjoyment of the Christian Religion and a Desire of propagating the same were the principal views with which this Colony was settled." The Colony was not founded by King Charles in 1663 but by Williams in 1636.

Thus the Court subverted the principles of Williams and the plain language of the charter of "a lively experiment" and "full liberty in religious concernments." And finally the Court said, ". . . by a law made and passed in the year 1663, no Person who does not profess the Christian Religion can be admitted free of this Colony."

However, the petition was one for naturalization and not for admission as freemen.

The "law made and passed in 1663" was never passed as such and has been the subject of close examination by historians. It did not appear in print until 1719 in the Code of Laws, which was never enacted by the Assembly. And the phrase, "Professing Christianity," appears to be an unauthorized interpolation. The Act passed in 1684 in answer to the Medus petition seems to imply this interpretation.

Samuel G. Arnold, a lawyer and noted historian, in language that is restrained and befitting a gentleman, was nevertheless emphatic in his condemnation of the decision, when he wrote,¹¹

. . . grounds that were not only a violation of the spirit of the charter, but a direct disregard of an act of Parliament . . . The court construed the act to suit their purpose, going behind the record to pronounce upon the probable or possible intention of the act, which was an assumption of extra-judicial power . . . The decision in the case of Lopez appears to be irregular in every respect. It subverts an act of Parliament, violates the spirit of the charter, enunciates the principles never acted upon in the Colony, and finally dismisses the case on a false issue.

The questions to be answered are why the General Assembly refused to take jurisdiction and why the Court at first refused to take jurisdiction, referring the petition to the Assembly and when compelled to do so by the action of the Upper House, perverted its office unanimously. The key is supplied by Arnold, in these words,

We know of but one cause that can explain all this, in a single word—party spirit. The strife between Ward, then chief-justice, and Hopkins, then governor, was at its height, resulting in the defeat of Hopkins at the ensuing election. Some of the details of that contest, herein recorded, exhibit as gross violations of right and of usage as does this decision, but none so utterly absurd.

Stephen Hopkins became governor in 1755 and up to 1768 was elected ten times. He was one of the most prominent and able men

¹¹Arnold, *op. cit.*, II, 494-496.

in the Colony, a charter member and trustee of Brown University, and later a delegate to the Continental Congress. His rival for the office of governorship was Samuel Ward of Westerly, who was elected three times, including 1762, the year of the Lopez decision. Judges were laymen and elected annually. Elections were held annually, the result being decided by the narrow margin created by a few pounds or shillings distributed to the right voters. The feud between these two men was bitter—personal and political—and for fourteen years kept the Colony in turmoil. Behind the feud was the struggle between Providence and Newport for dominance as well as conflict between the landholders and commercial interests.

Aaron Lopez came to Newport in 1752 and rapidly rose to become a merchant prince and ship owner, one of the wealthiest men in Newport. He carried on an extensive business with the Browns of Providence, taking the greater part of their production of iron at the Hope Furnace. Nicholas Brown and he were business partners in various ventures. At the solicitation of Nicholas Brown he contributed ten thousand board feet of lumber to the first building of Brown University and chartered a vessel to the government during the Revolution.

One of the most important industries in New England as well as one of the most competitive was that of the production of spermaceti and oil from the head matter of whales for the manufacture of candles and oil for lamps. In 1761 Lopez; Jacob Rodrigues Riviera, his father-in-law; Moses Lopez, his brother; Naphthali Hart; the Browns of Providence; and four other manufacturers formed The United Company of Spermaceti Chandlers, one of the first price fixing monopolies in America.¹² This agreement was renewed on April 13, 1763, when the Browns were allotted one-fifth of the raw material purchased and the four Jewish firms one-third. The agreement was policed by Riviera. As their leader Lopez, being of Newport, could easily have incurred the displeasure of Ward and his party.

The Browns and Lopez were closely associated in many business ventures and there can be little doubt "that the Browns supported the Hopkins political faction with all the resources at their command, including the brazen and unabashed use of money to buy the votes

¹²Broches, *op. cit.*, II, 41-44. Lee M. Friedman, *Jewish Patriots and Pioneers* (Philadelphia, 1942), 309-314.

of the electorate."¹³ The buying of votes directly was a common practice.

The different decisions by the Upper and Lower Houses of the General Assembly would indicate that the control of the two Houses was divided between the governor and the chief justice. In the vernacular Lopez was *in the middle*. Political affairs follow industrial and private business.

Lopez, upon the advice of his Boston agent, took up residence in Swansea and was naturalized at Taunton, Massachusetts; and Elizer went to New York, where he was naturalized. Both of them came back to Newport to live and to carry on business until the Revolutionary War broke out.

The Declaration of Independence by Rhode Island in May, 1776, found the colony divided between Tories and Loyalists, a situation which was fertile ground for a campaign of hysteria, snooping, and smearing. In this atmosphere the Assembly passed restrictive legislation, providing for a loyalty test. Seventy-seven persons in Newport, suspected as inimical to the United Colonies of America, were summoned to appear before a committee and take the loyalty test. Among them were four Jews: Rabbi Isaac Touro, Isaac Hart, Myer Pollock, and Moses Hayes. Rabbi Touro and Pollock refused to sign on religious grounds, but Hart and Hayes refused on grounds that the test was not general. Hayes had already subscribed to a general oath in June and resenting the suspicion in which he was held, left the following written copy of his remarks to the committee:

I have and ever shall hold the strongest principles and attachments to the just rights and privileges of this my native land, and ever have and shall conform to the rules and acts of this government and pay as I always have my proportion of its exigencies. I always have asserted my sentiments in favor of America and confess the War on its part just. I decline subscription to the Test at present from these principles first, that I deny ever being inimical to my country and call for my accusers and proof of conviction. Second, that I am an Israelite and am not allowed the liberty of a vote, or voice in common with the rest of the voters though consistent with the Constitution, and the other Colonies. Thirdly, because the Test is not general and consequently subject to many glaring inconveniences. Fourthly, Continental Congress nor the General Assembly of this nor the Legislature of the other Colonies have never in this contest taken any notice

¹³James B. Hedges, professor of history, Brown University, letter to the writer, August 12, 1951.

or countenance respecting the society of Israelites to which I belong. When any rule order or direction is made by Congress or General Assembly, I shall to the utmost of my power adhere to the same.¹⁴

Nor would Hayes let the matter rest there, but addressed a petition to the General Assembly, protesting the humiliation to which he had been subjected and requesting vindication. As a result the law was changed to apply to everyone generally.

From 1761 until 1843, when the State Constitution was adopted, there was persistent, continuous, and ever-increasing agitation on the part of the inhabitants for the removal of the political disabilities under which they lived. This agitation resulted in the repeal in 1783 of the Anti-Catholic clause and extended to Catholics the same rights as Protestants to be admitted freemen and in 1828 in the passage of an act removing all religious disqualifications. Many abortive attempts were made to pass a new State Constitution.

There is no question but that there was discrimination against Jews, but such discrimination was incidental to the fact that the Colony operated under the original charter, which placed the power of admission of freemen in the hands of landed proprietors and their successors. Control was absolute and possibly accounts for the stability of the colonial government in spite of the fact that it harbored a "motley crew of Dissenters and Non-Conformists." Even after the Revolution and statehood the colony continued to be governed under the colonial charter. In 1841 out of 14,000 persons who voted on the People's Constitution, 9,000 did not have the right to vote under the Charter. The political discrimination to which Jews were subject was also directed against Catholics and Protestants as well.

The occupation of Newport by the British during the Revolution and losses during the War of 1812 destroyed the business and commerce of that city with a resulting loss of half its population, including Jews, the last of whom left Newport in 1822. Court records show that many Jewish merchants from New York and Newport did business in Providence throughout the eighteenth century. Although the Lopez, Riviera, and Mendes families stopped in Providence for a short time in 1776,¹⁵ Jews did not permanently settle in Providence until after the adoption of the State Constitution.

¹⁴Archives, Revolutionary War, Suspected Persons (1775-1783), II, 8, 9, 14, 18.

¹⁵*Ibid.* List of Inhabitants of the Town of Providence, July 18-23, 1776.