

**INSOLVENCIES IN VICTORIA, 1842-1902
A HISTORICAL SURVEY OF JEWISH INTEREST**

by

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The Secretary of the Victorian Branch of this Society prepared a selection of Jewish names appearing in *The Victorian Insolvent List*, a publication which was "compiled from authentic sources" by J. Noble Wilson. It was first printed in 1862, included also a list of Public Assignments, 1854-1862, and was intended "to provide a great commercial want". The first edition of the book covered the period, 1842-1862, containing the names of Victorian insolvents, their addresses and occupations, and the value of their assets and liabilities. In the case of assignments for the benefit of creditors — where no insolvency had yet occurred — the name of the assignee was given. A continuation of this earlier work was published by Lyall & Gowan, furnishing similar particulars for the years 1863-1866; and a third and last edition covered the period, 1867-1873. The obvious purpose of the work was to provide the commercial community and traders with a reference book from which it could be determined whether credit could safely be given to customers, and of course anyone in business would be cautious in dealing with one whose name was listed as an insolvent or as having assigned his estate. Such a type of publication, which has since become regularly available in commercial circles, must have filled an essential need in the unstable economic conditions under which Victorians carried on business during the last century, when the means of communication were not always easy, especially in the remoter areas. The present writer is responsible only for the selected list of insolvents, 1862-1866, and also for the names of those who assigned their estates. In making the selection of names, and bringing these lists under notice, Mrs. Davis rightly perceived that it had intrinsic interest for readers and students of Australian Jewish history, as well as furnishing contemporary information about Jews of the relevant periods, thereby helping also to identify individuals who may be the subject of future research and investigation. However, this writer was fascinated, to an extent, by such a substantial collection of names, and thought that it would be further desirable to identify some of them with persons who have otherwise been referred to in a work such as L. M. Goldman's *The Jews in Victoria In the Nineteenth Century*, an author who sometimes made reference to the business difficulties encountered by these persons. The economic history of those times in the colony of Victoria reveals continuous and even confusing fluctuations in the financial conditions between periods of boom and depression, and it is certainly of interest to note how members of the Jewish community fared, many of whom experienced all the vicissitudes of traders in general. There was usually little to the discredit of these people and some of them could have hoped for a more charitable concern by the Jewish community. In this essay the writer has attempted to examine a variety of cases constituting many strands in a story that is far from complete. Having regard to the sources available, the

reader will be taken, as it were, along a stream nowhere broad, which frequently meanders through its course. And, towards the end of the 19th century it is also possible to survey some of the involvement of Jewish personalities in the most serious of the depressions in Victoria's history. In touching upon the role of Isaac Isaacs, and others as well, an occasional digression may be permitted, enabling such information to be conveniently recorded within the confines of this article. The aim has not been simply to repeat all the details already appearing elsewhere but rather to make some of them more accessible and relevant for readers of this Journal.

The pastoral boom of the thirties of the last century, when the Colony of New South Wales experienced rapid expansion, was followed in the early years of the next decade by a severe depression, often called "distress" or "monetary confusion". Schedules of Insolvency were of frequent occurrence and unemployment was rife. High land prices, over-capitalization, dramatic falls in the value of wool, and excessive immigration all contributed to the slump which caused the failure of a number of banks. Before the end of 1844, Sydney had 1356 sequestrations, and Melbourne, 282.¹ Filing a Schedule, it has been said, ceased to be a disgrace:

"You may talk of your honour and honest repute,
And for loss of your credit may fret;
But when you can't pay there's nothing will suit,
But to schedule and get out of debt."²

A new Insolvency Act was brought down in 1842, and in 1843, a Select Committee of the Council was appointed to inquire into and report on the Insolvent Act.³ The members of the Committee were, Dr. Charles Nicholson (Chairman), Messrs. Cowper, Foster, Lowe, Therry (Attorney General), and W. C. Wentworth. In this regard, it is of interest to advert to some of the evidence given to the Committee by Samuel Lyons, the Jewish emancipist who had already achieved spectacular commercial success.

On Saturday, 25 November, 1843, Lyons appeared before the Committee and stated that he had proved for debts of £33,000 and recovered only £800, or 6d. in the £. He attributed this situation, he said, to a very great extent of frauds, although other witnesses laid no special emphasis on the fraudulent conduct of debtors. "There is an insolvent," Lyons remarked, "that walks the streets now, but is dressed in better clothes, and better boots, than they wore before they passed the Court." He added, "I see none with their elbows through their coats, or toes through their shoes; they are to be seen dashing and driving about in their carriages." Although he had effected sales of £703,403/15/- during the last two years and five months, he was able, Lyons said, to realise only £26,915/2/- from the sale of insolvent property. He told the Committee that the Court ought to have additional powers, so that a fraudulent debtor might be punished "in the same way as a felon". He thought that the Court proceedings were not formal enough, and he spoke of being "grossly bullied and abused" in noisy scenes before the Commissioner. Stricter control over fraud and perjury on the part of debtors was also advocated by the Attorney, David Poole.

In Port Phillip, too, the rate of development had caused a great demand for all commodities, which were mostly imported. On the other hand, exports were small, and people lived extravagantly. There was an excessive demand for land in the country, and sheep stocks were far too high, selling for 2/- each and less. Melbourne was almost ruined by the resulting depression, trade was disorganised, and bankruptcy was widespread. The land boom had created a fictitious prosperity and encouraged reckless speculation and easy borrowing. There had been an influx of population but business failures were almost a daily event.⁴ It is, however, not surprising that there is a dearth of Jewish names in the Insolvency lists of this early depression. Most of the Jewish migrants were poor people who sought escape from the adverse economic conditions in England. They had little or no capital, and the majority occupied themselves in Port Phillip, in the business of selling clothes or in the drapery trade. Their general poverty explains the scarcity of Jewish names in the Land Sales lists. At the height of the crisis, in 1843, only Moses Lazarus is listed as insolvent. He conducted a clothing and drapery store, known as "Portland House", and it was upon these premises that one of the very first religious services was held on New Year, 1839. By the end of the forties, Port Phillip had surmounted its financial troubles although the name of Abraham Abrahams is shown as an Insolvent in 1848. It was from him that the Jewish community acquired its first burial ground. Another, Isaac Lazarus Lincoln, who had been prominent in religious affairs, faced insolvency in 1849. About this same time, much adverse publicity was given to the case of Phillip Phillips, a trader of Geelong accused of practices unfair to his creditors. He was one of the first to be buried in consecrated ground in Geelong after being drowned in crossing Muston's Creek, apparently in 1851. Incidentally, fate was no kinder to Lincoln who, whilst returning in 1847 from a visit to California, was drowned in a shipwreck with others of the family. Such, indeed, was the lot of some of these pioneers to whom the words of the ancient liturgy were very real: "... It is sealed and determined . . . who by water . . . who shall be at rest, and who shall be wandering . . . who shall get rich and who become poor."

In the newly separated Colony of Victoria, in 1851, the gold fever commenced to rage and was later followed by chaotic conditions and an acute depression. Money was scarce and credit became unobtainable. The great influx of population, a glut of imports, and excessive speculation culminated in the depression of 1854. At the height of the gold rush, most other industries stagnated, prices and wages were extremely high, but trade profits began a decline. Within a short time, there was little alluvial gold to be found and many of the migrants, particularly in Melbourne, experienced destitution and unemployment. While the boom had lasted, over-trading continued on a grand scale.⁵ "There are very few," wrote an observer, "if any, pawnbroker shops, or old clothes shops."⁶ The economic distress, however, did not leave the Jewish community unscathed, even if it did not appear to suffer too many insolvencies. Amongst the names to be noted, are: Benjamin Fargeon, storekeeper, journalist and writer of Sandhurst (Bendigo); George Dancyger, active in the Ballarat Congregation; Emanuel

Steinfeld of the Committee of Ballarat Congregation and later Mayor of Ballarat East; S. Soleberg of East Melbourne Congregation; M. H. Solomon, who conducted a Jewish School in Melbourne and was afterwards Headmaster of the Ballarat Hebrew School; Solomon Phillips, of the Melbourne Congregation. He was prominent in Jewish communal affairs, he had been assistant Minister at the Sydney, Bridge Street, Synagogue and took part in the consecration of the York Street Synagogue. Phillips went into business in Melbourne and is listed as an Ironmonger who assigned his estate for the benefit of creditors in 1855.

During the earlier 'sixties there was a tightness in Victoria's money market, unemployment was extensive and trade declined under the influence of a deflationary period. The Protection legislation of that time was of little effect as the goldfields population began to look for other livelihoods, there being few factories or industries. The fiscal question occupied considerable attention when manufacturers could not compete in a glutted market and there was a serious fall in the level of wages. In the latter half of the decade, the number of miners steadily diminished and there was a shrinkage of those supplying their wants.⁷ There were, therefore, many bankruptcies and assignments, and although it is impossible to be precise, the number of Jewish cases seems to have been significantly high — perhaps 10 per cent of the total. Speaking, apparently of the next decade, Goldman wrote: "Of the hundreds that passed through the Insolvency Court annually, few belonged to the Jewish persuasion."⁸ The available evidence, however, does not justify such a positive statement. Without any need to cast reflections of any kind, the fact is that the small minority Jewish element was much involved in trade, so that it inevitably suffered from the adverse economic conditions. The Jewish migrants, as the same author so rightly remarks, were "prepared to undergo all the hazards of mining life, with its hardships, difficulties and uncertainties."⁹ As was the case, earlier, with Solomon Phillips, so now, in 1864, even the Minister of the Melbourne Congregation was exposed to Insolvency when Emanuel Myers, described as a teacher, filed his Schedule. Solomon Belifante, a leader of the Sephardim, was heavily in debt. Some others included in the Insolvency lists were: Solomon Iffla, surgeon, and active in the Melbourne Jewish community; Henry Horwitz, a President of the Melbourne Congregation (assignment); Isaac Lyons, President of Bourke Street Synagogue (assignment); Wittkowski Bros. of Melbourne, Ballarat and Geelong (assignment); Joel Hart of Yackandandah, Secretary of the Beechworth and District Congregation; Isaac Zachariah, dealer of Ballarat and registered as an acting lay Minister of the Ballarat Congregation; Henry Cohen Pirani (assignment), a leader in Melbourne Jewish Education; Philip Blashki, the founder of the well known Melbourne family, later a Vice President of the Chamber of Manufactures. It may be noted that, in 1867, Louis Monash, the father of the famous John Monash, was bankrupt, although on a relatively small scale. He had arrived in Melbourne as a migrant in 1853, becoming a partner, not too long afterwards, with one, Martin, Soft Goods Importers. The biographers are certainly correct in finding that Louis Monash made no fortune as a

Melbourne merchant, and that his affairs were not too prosperous.¹⁰

Most of the Jews listed as insolvents or otherwise in financial difficulties carried on business, as might be expected, in Melbourne or in other centres, such as Ballarat, Geelong and Sandhurst. Others, however, were located in remote or more distant places. Thus, one notices, for example, Lazarus Berlowitz of Molesworth and Alexandra, Woolf Cohen of Alexandra, Joseph Moss of Eldorado, Philip Perlstein of Beechworth and late of Harrierville, Joseph Feldman of Jamieson and Drummond's Point, Morris Davis of Jamieson, Michael and Louis Rosenthal of Pleasant Creek near Ararat, Samuel Alexander of Ararat, Samuel Isaacs of Inglewood, Charles Phillips of Chiltern, Jacob Vandenberg of the Ovens, Levi Levinsohn of Inglewood, Harris Friedlich of Maldon, Nathan Salinger of Pleasant Creek, Julius Max Rosenthal and David Lyons of Donnelly's Creek. Some of those here listed could not have been as successful as others who would have reaped richer rewards, engaged in the less arduous occupation of supplying the needs of the miners. There were many reckless ventures by some of the miners, and when the gold reefs were exhausted, goldfield traders shared in the resulting losses.¹¹

A passing comment would seem to be warranted in noting one of the very few rather large bankruptcies. In 1868, Lawrence Joseph Spyer, described as a Merchant of Queen Street, Melbourne, and resident partner in the firm of L. & S. Spyer, had incurred liabilities of the order of £16,000 a sum which may well be the equivalent, perhaps, of almost one-half million dollars in today's currency. Assuming that there has been no mistake of identity, this same Spyer was in partnership in Sydney, in 1831, with P. J. Cohen. That partnership was wound up, in 1831, when Michael Phillips and others took the necessary insolvency proceedings. Again, in 1837, when Lawrence and his brother Stephen Spyer were in business as partners, Samuel Lyons, who was not noted for any leniency in such cases, prevented their release from prison after they had served three months for being unable to meet their debts. Until about 1865, the firm was trading at Wynyard Square, Sydney under the name of L. S. Spyer & Co., merchants.¹²

As the 'seventies advanced, the Colony of Victoria entered upon a stormy epoch marked by political excitement and the division of the country into camps, the liberal protectionist radicals and — on the other hand — the conservative free traders. Party discipline was very weak, government was unstable and both Houses of Parliament were in conflict with each other. Eventually, business and industry was paralysed and public confidence and credit was shaken. It was, as some said, a rueful time as the "Berry Blight" ultimately spread over the land.¹³

In 1871, Moses and Hirsch Fink, storekeepers of Geelong, assigned their estate. Moses Fink arrived in Geelong from Guernsey, joining his brother, Hirsch, in business. Two of the sons of the former, Benjamin and Theodore were later, as will be mentioned, particularly prominent. Hirsch Fink had been a member of the Committee of the first Geelong Synagogue. About this same time, Philip Cohen, Tobacconist, was insolvent. He is recorded as espousing the cause of Free Trade but with no apparent

success. Solomon Joseph, listed as a broker, faced bankruptcy. He appears to have established the Melbourne Hebrew Literary Society and also published and owned "The Australian Israelite", which first appeared in 1871 and ceased publication about four years later. This most valuable paper, it was stated, was "left to die of starvation".¹⁴ Joseph's insolvency preceded the launching of the paper, so that it was not the cause of his financial difficulties. Then comes the case of the unfortunate Marcus Josephson, Caretaker-*Shamos* of the Melbourne Synagogue and Collector for the Hebrew School. However charitable the Congregation otherwise was, its own employee officials were not objects of their bounty. Josephson was completely rebuffed when he appealed to the Congregation for assistance. He was allowed to suffer the fate of the proverbial "church mouse", with the result that the poor *shamos*, listed as a dealer, filed a schedule showing liabilities of £85. When, in 1872, Lewis Berrick hoped for a further term as collector, *shamos*, and doorkeeper of the Congregation, he failed to secure the appointment in view of his refusal to abandon other business. This turn of events must have contributed to Berrick's voluntary sequestration in his watchmaker business. At this time, also Michael Perl, a Melbourne Importer, underwent a compulsory sequestration, presumably because that kind of business could then have been very hazardous. He afterwards assisted in the Services of the East Melbourne Congregation and, some ten years earlier, Perl was one of those who was particularly helpful to Rabbi Saphir's Palestine Mission. In Geelong, Elias Stone was in business as a jeweller and general storekeeper. He was then the Treasurer of the local Synagogue. Both of the assignees of Stone's estate were fellow Jews, recorded as David Rosenthal, merchant of Melbourne, and Michael Samuel Levy, auctioneer of Geelong. Rosenthal was active in the formation of the first St. Kilda Synagogue, whilst Levy was one to receive special appreciation of his efforts to assist Rabbi Snersohn in raising funds for Jerusalem. He stood, unsuccessfully, in 1876, for the seat of Geelong West. Again, in 1870, Sigismund Jacoby, together with Henry Horwitz, both general storekeepers of Hamilton, assigned their estate. Jacoby was a member of the Hamilton Borough Council, and some years later, was a Councillor of St. Kilda Borough Council. In the field of music and entertainment, there were few Jews involved. In 1872, however, two of them were reduced to bankruptcy, one being Isaac Coleman of Carlton, formerly a Publican, and the other being Barnett Levy of Fitzroy, a Musician. Goldman writes that Coleman was the proprietor of the London Music Hall at which the tenor Braham sang, adding that the orchestra was "under the baton of Barnett Levy, late of the Theatre Royal".

Whether Sir Graham Berry's policies and administration had the effect of setting back progress, is perhaps a moot point, although some felt very strongly that his Government had terrorised the moneyed classes of the community.¹⁵ From the beginning, however, of the 1880's, moderation and compromise began to prevail in government. The Colony regained stability, particularly during the regime of James Service who advocated the mutual interest of classes and adopted reforms of a practical kind. As the *Age* conceded in 1886, "no parliament can show a more imposing

record of great public utility",¹⁶ Capital was flowing into the colony, industry was expanding, and widespread speculation produced an extraordinary land boom during which land values climbed to fantastic levels. Many land and finance companies were being promoted but they offered the investing public too little protection. The government, in 1889, encouraged extravagant borrowing policies. Parliament itself, as Michael Cannon points out in his fascinating story, *The Land Boomers*, "became a sort of land speculators' club",¹⁷ and few, indeed, raised their voice in Parliament against the scandals of the day. From 1891, when the crash came, until 1892, more than 120 public companies went into liquidation, and certain Banks either failed or suspended business. The Colonial Bank, of which Sir Benjamin Benjamin was a director, was forced to close its doors temporarily, but the Imperial Bank, under the leading directorship of Benjamin and others, crashed as a result of its heavy speculations in land deals. As the Lord Mayor of Melbourne, Legislative Councillor and leader of the Melbourne Hebrew Congregation, Benjamin maintained a reputation for the highest rectitude, even if his eventual bankruptcy with the aid of hindsight, could be attributed to imprudent speculation and excessive trust reposed in others. Benjamin, as is well known, incurred heavy losses, filing a schedule that gave the creditors 1s.0d in the £1. He resigned from all public offices held by him — which Benjamin never afterwards resumed — including his position as trustee of the Melbourne Congregation. Benjamin did not avoid the public stigma of bankruptcy, unlike many others who took advantage of the law by entering into secret compositions with their creditors, gaining thereby a complete discharge from insolvency.

Benjamin Josman Fink, a son of Moses Fink, has been described as "the real epitome of the era", starting "so many billowing companies, borrowed so heavily, speculated so widely, failed so disastrously . . . left such a swathe of ruin and despair".¹⁸ Fink was the Independent Member for Maryborough in 1883-89 but his business affairs rapidly and extensively occupied his main interests. Those who wish to do so may refer to Michael Cannon for a full account of Fink's gigantic speculations and financial schemes. Fink's total debts were at least £1,830,000, and his bankruptcy yielded ½d. in the £1 to the creditors. He left Melbourne with his family and died in London in 1909.¹⁹ There is nothing to indicate that he played any role whatever in the affairs of the Jewish community. His younger brother, Theodore, built up a thriving legal practice in Melbourne, one of the partners being P.D. Phillips, son of Solomon Phillips. It seems that Theodore had a special expertise for arranging secret compositions with creditors. Apart from his clients, Theodore himself, his brother Wolfe and father-in-law, George Isaacs, enjoyed the benefit of such compositions.²⁰ It does appear that Theodore Fink had some involvement in Jewish Education, and for a period was on the Executive of the Melbourne Synagogue.^{19a}

P.D. Phillips is sometimes referred to as "a famous barrister" of the day. Most indications are, however, that in a profession that was only theoretically fused as between barristers and solicitors, Phillips practised as

mentioned, P.D. Phillips, described by the Press as “the well known Insolvency practitioner”, addressed the Institute of Accountants at the Vienna Cafe, Melbourne on 7 October, 1897. It seems a little strange, indeed, that Phillips was motivated for such an assignment so close to the concluding hours of Yom Kippur, the sacred Day of Atonement. The speaker, however, was able to launch himself into a vigorous attack upon Isaacs’s Insolvency legislation which, he said, included retrograde and inoperative clauses, producing, in his view, “a pretty mess in a legal code”, for which the Premier, Sir George Turner would have no reason to be proud. The new Act, Phillips continued, included costly, cumbrous and complicated provisions affording little protection to the honest trader and the unfortunate debtor.²⁹

In early times, both under English and Australian law, insolvency was regarded as almost criminal. Provision was made in England, in 1719, for the release of bankrupts from prison after obtaining their certificates of discharge, but it was not until 1869 that imprisonment for debt was abolished subject to certain exceptions in the case of fraudulent debtors. The bankruptcy law ultimately developed so as “to mitigate the severity of the primitive rules which gave creditors the power to secure the imprisonment of their debtors”, *Storey v. Lane* ([1981] 55 A.L.J.R. 608, 611). Even today, although rather infrequently, a debtor may be committed to prison because of some fraud or dishonesty in contracting debts or in divesting himself of property or if he has acted in defiance of court orders; *Commissioner for Motor Transport v. Train* ([1972] 127 C.L.R. 396). In the early days of New South Wales, which then of course included Port Phillip, debtors were imprisoned for debt but were discharged unless they were maintained by the creditors: 6 Geo. IV. No. 8 (1825). Under the statute, 11 Geo. IV No. 7 (1830), insolvent debtors who made full disclosure and surrender of their estate were entitled to be discharged out of prison. After the enactment of 2 Wm. IV No. 11 (1832), any person imprisoned and unable to pay his debts, might apply to the court to be discharged and to be permitted to file his schedule. These local procedures were beginning to humanise some of the rigours of the relevant English law. The eminent legal historian and jurist, Sir Henry Maine, noted the severity of the ancient legal systems: “Nothing strikes the scholar and jurist more than this severity of ancient systems of law towards the debtor and the extravagant powers which they lodge in the creditor.” In early Athens enslavement for debt was a fundamental law. The Roman Republic extended little mercy for insolvents, but in the time of Julius Caesar a debtor was discharged if he gave up everything to the creditor — *cessio bonorum*. The traditional Jewish ethical teachings, however, in contrast to such systems, were always, at least ideally, markedly different in requiring lenient and kind treatment as between creditor and debtor: “If thou lend money to any of my people who is poor by thee, thou shalt not be to him as an oppressor.” (Ex. 22:24). The Torah emphatically indicates due restraint in demanding payment from the debtor when it is known that he is unable to pay. It is laid down that the debtor must not be harassed if he is without the means of repayment, but the debt may again be demanded when there

is a chance of recovery; Talmud, *Baba Metzia*, 75B. These ethical laws, as a modern commentator writes, stress that the creditor may not even *appear* as an oppressor towards the debtor: "In other words, when we see someone who owes us money, and he cannot pay us, we should walk on the other side of the street so that he should not see us."³⁰ In this regard, it is difficult to avoid an unfavourable view of the treatment by the Victorian Congregations of some of their own officials whose financial condition forced them into insolvency. One would have hoped that men such as Solomon Phillips, Emanuel Myers and Marcus Josephson, who all appeared "to occupy themselves in faithfulness with the wants of the Congregation", would have earned a reward that would have saved them from the indignity and distress of insolvency.

Even before the disastrous land boom of the 90's, the Victorian economy was far from buoyant. In 1879, the popular parliamentarian, E.L. Zox, accepted a "friendly liquidation" when he and his partner Lewis Myers found themselves in financial difficulties. Although he was not actually bankrupt, Zox decided to resign his seat and was re-elected.³¹ However, the depression of the next decade, which was much more significant, involved some prominent Jewish names. Most valuable as Rabbi Goldman's history is, the author's work barely contains any mention of the role played by some Jews in the sorry and tragic events of the above depression. In three lines, there is only a mention that, "In the calamitous bank and financial crash, another former member of the legislature, Benjamin Josman Fink, fell heavily, filing his schedule to the extent of a deficiency of £1,109,275."³² It is of course true that Goldman did not have the advantage of an account such as Michael Cannon's *the Land Boomers*, but the contemporary newspapers and writings are full of details of the depression and of those who featured in it. It is quite unnecessary, and it is sometimes too easy, to be condemnatory of those whose names come under notice in a period described as being perhaps the supreme crisis of the colony in the Victorian era. It is possible to write fairly and objectively of persons such as B.J. Fink of whom, as Cannon remarks, "His manipulations when the boom collapsed disfigured an otherwise productive career." In his early life, as that same authority observes, Fink "undoubtedly had remarkable acumen and energy, but like many others became obsessed by the land boom of the 1880s".³³ A contemporary who was well familiar with Fink, afterwards wrote of him as "far and away the ablest of all the land boomers", as the "cleverest of all the financiers", and as a subtle and astute man of business, filled with restless energy in the carrying out of his schemes.^{33a} Sometimes linked with Fink, and a leading speculator of the time, was Abraham Kozminsky, who entered into a secret composition in 1892 paying 1d. in the pound when his estate showed a deficiency of £92,266.³⁴ Kozminsky was apparently active in Jewish communal affairs, being the first Treasurer of the re-organised Jewish Aid Society. In 1896, Barnett Hyman Altson, well known as the Melbourne tobacconist, went bankrupt, suffering substantial losses in share deals and other speculation. Altson also took an interest in the affairs of his own community, appearing as one of the Committee of the first United Jewish

the Court decided that the certificate ought to be refused. Justice Molesworth held that the insolvent's evidence was grossly improbable and that the settlement was not a bona fide one. Speaking of the lady's actions, which she claimed were in accordance with her husband's wishes that she should settle all her property on one daughter, the learned Judge said: "No intention of the kind was ever promulgated to add to the young lady's attraction to suitors. This settlement formed no part of the negotiations with the intended husband and was no inducement to the marriage . . ." An appeal, which was taken to the Full Court (Stawell C.J., Barry and Williams J.J.) was dismissed.⁴⁰

Joseph Aarons was the trustee of a deed of assignment made in 1864 by Samuel Barnett for the benefit of all his creditors. Bertram Nathan, a creditor who executed the deed, called on the trustee for a payment of a dividend, but a meeting of creditors directed Aarons to refuse payment of Nathan's claim as there were doubts of the genuineness of the debt. The Equity Court (Molesworth J.) decided that the trustee, Aarons, had a discretion to refuse payment, but Nathan was not ordered to pay any costs as the provisions of the deed had come upon him as a surprise. The Judge was of the opinion that the particular deed ought not to have been hawked about among the creditors for execution by them. It may seem a little strange today that these three Jews were unable to resolve a dispute over a dividend of £25.5.0. without resort to such litigation in the highest courts. The bona fides of the debt was ventilated in public, even if there may also have been argument on some question of principle. Joseph Aarons himself was a builder by trade, he was well known for his activities within the Jewish community and, in the 70's, he was also an Alderman of the Melbourne City Council. The Academy of Music in Bourke Street, which Aarons built, proved to be a financial embarrassment. When Aarons went insolvent and was later granted a certificate of discharge, an appeal was taken to the Full Court of Victoria against the grant of the certificate. The Court dismissed that appeal although a number of allegations had been made against Aarons.⁴¹

Charles Dyte was a man of great popularity in the Ballarat district, he was a local Mayor, leader of the Hebrew Congregation and in the 60's he represented Ballarat as a parliamentarian. His business affairs, however, were not conducted so successfully, and in 1875, Dyte filed his schedule. The Judge in Insolvency in Ballarat granted a certificate of discharge without the payment by Dyte of the statutory sum of seven shillings in the pound. The insolvent believed that his bank, to whom he was indebted for overdrafts, was his only creditor. As a shareholder and mining speculator, Dyte claimed that he met with reverses and misfortunes. He received a legacy from a brother in England, he borrowed money from another brother, Edward, and then purchased a moneybroking business which turned out to be a source of liability. Charles Dyte was also the trustee of The Co-operative Store Company of which a creditor sued Dyte and then levied upon Dyte's property, to the utmost extremity of the law, leaving him without anything. Dyte was therefore anxious to resume his business as an auctioneer and to be able to support his wife and family. When the last

mentioned creditor appealed against the grant of the certificate, Molesworth J. was unfavourably impressed with Dyte's dealings and affairs. His Honour remarked that allowance was always made for unusual misfortunes, which did not include "rash inconsiderable speculations, dealing in a gambling way with mining shares or purchasing a business requiring capital to carry it on, not having that capital". There had been presented "a confused muddle of dealings", as the Judge concluded, ordering that Dyte should pay seven shillings in the pound before the issue of a certificate.⁴² Charles Dyte established a reputation as a man of courage and high principles, and as one who had contributed much in personal service to the general welfare of Ballarat, including the Jewish community in that district. His own financial and business affairs may well have suffered as a result of his involvement in public affairs, particularly at a time when the economy was unstable. Further, there may be reason to doubt whether Dyte had a head for business complexities.

Towards the end of the 80's Abraham Schachtel Abraham failed to obtain an unconditional discharge from the Court of Insolvency. He had been engaged in floating companies, buying company shares and the sale of shares on commission by the company promoters. In dismissing his appeal, the Full Court of Victoria went on to say that the appellant relied only on his own unsupported testimony, and that he had resorted to reckless speculation in land and shares.⁴³ Abraham, it might be noted, had earlier served on the management committee of the Melbourne Jewish Club. Yet another case to reach the Full Court about this time resulted from the attempt by Joseph Davis, a partner with John David Myers in the business of J.D. Myers & Co., to set aside an order for voluntary sequestration obtained by Myers several years earlier during the absence overseas of Davis. The Court declined to set aside the order as Davis gave no good reason for the long delay on his part.⁴⁴

The operations of Theodore Fink came under notice, although only indirectly and briefly, of the Full Court when in 1894 Isaac Isaacs appeared for the appellants, Messrs. Saunders & Levy, who sought to set aside a composition by Fink with his creditors, claiming that their debt should be assessed on a different basis. The Chief Justice, Sir John Madden, pointed out that insolvency had nothing to do with a statutory composition with creditors by which the debtor was enabled to retain his property by arrangement with the creditors, so that it was too late for the appellants to try and dispute the matter.⁴⁵

There are many familiar Rabbinical dicta to the effect that religious learning ought to be combined with practical occupations. As has already been mentioned, several of Victoria's Synagogue officials found it necessary to engage in other occupations from time to time, but they did so, either because their business ventures had failed or for the reason that the Jewish community paid them such meagre rewards for their religious services. Moses Saunders, who joined the Melbourne Congregation in 1876 as a Second Reader, afterwards assigned his estate when he was unable to pay a judgment debt when sued in the Supreme Court by a former Jewish partner. The Congregation refused Saunders's request for an advance of

salary by way of assistance to him in his difficulties. In 1896, the Congregation was concerned to conserve its funds and retrenched Saunders who had become insolvent. After 19 years service with the Melbourne community, he accepted a position with the Perth Congregation.⁴⁶ In the 70's, Maurice Brodzky arrived in Melbourne and tried to earn a living as a teacher in the Hebrew schools until he discovered his niche in journalism. Michael Cannon has traced Brodzky's life and career by devoting a short section in his book and by an entry in the *Australian Dictionary of Biography*.⁴⁷ Brodzky was first insolvent after his publication in 1877 of the *Historical Sketch of the Two Melbourne Synagogues*, when the author unsuccessfully sued Rev. E. Blaubaum of St. Kilda for libel. He was related by marriage to Theodore Fink who arranged a voluntary sequestration for Brodzky when he was unable to pay the costs of his litigation. Eight years later Brodzky secured his discharge, and although still in a difficult position, he immediately launched his weekly journal, *Table Talk*. In the next few years this paper achieved an extraordinary standard in so far as it furnished financial news and information and contained disclosures of some of the disastrous speculations and transactions of the period. Not without surprise, Brodzky, a man of rather limited means, exposed himself to defamation proceedings.

The *Ballarat Star*, which Brodzky sued for damages in 1893, had published a brief report of certain remarks in Parliament by Dr. Maloney who, speaking of the so-called "mace slanders", said that Brodzky started the slanders in his "blackmailing" paper. The proprietors of the *Ballarat Star*, for whom Isaacs appeared, sought in the Practice Court before Justice A'Beckett, to have the action stayed until the plaintiff gave security for costs or to have it remitted to the County Court for hearing. The defendants would have been protected if they had published a normal report of parliamentary proceedings, but the case apparently raised an important question of law whether such privilege could be claimed by a paper that contained the above remarks of Dr. Maloney in a very condensed form. On behalf of the defendants, Isaacs submitted that the plaintiff had admitted that he had already made over to his wife all that he possessed in the world, and also that it was absurd for anybody to expect the newspaper to have printed a full report of the remarks in Parliament, particularly when it had to rely upon a telegraphic report. The judge decided that such an important question of law ought to be tried in the Supreme Court, even if a plaintiff were a pauper, adding that it was the defendant's misfortune that it should be so.⁴⁸ The *Melbourne Age*, in a leading article, was very critical of the Court's ruling on this point, urging that it ought to "frown upon speculative or blackmailing actions, which some Messrs. Dodson and Fogg may take up in the hope of getting costs out of a solvent defendant, and that the ruling might prove 'disastrous to the efficiency of an upright and outspoken Press'."⁴⁹

Sir Zelman Cowen, in his major biography of Isaacs, defends his subject against certain contemporary criticism that he neglected his portfolio as Solicitor-General in favour of his private practice at the bar.⁵⁰ Nevertheless, a modern day commentator must find it rather difficult to

appreciate how Isaacs, holding the position of Solicitor-General, so readily acted for private litigants in matters that raised controversial political and public issues. Thus, within a few days only of appearing against Brodzky, Isaacs was briefed on behalf of the Commercial Bank to appear before the Chief Justice to obtain a stay of a winding up Petition against the Bank so as to enable its creditors and shareholders to consider a compromise or arrangement after the Bank was forced to suspend payment to its depositors. Although the Court had no difficulty in acceding to the Bank's motion, it does seem surprising, to say the least, that one with Isaacs's official status should have been seen appearing in a case of such a nature.⁵¹ Perhaps, whatever might be said of present day politics, the niceties of public life were not clearly defined and observed throughout the 19th century in Australia.

Obligated to support a wife and seven children, Maurice Brodzky relied heavily upon his business as a journalist. The profits from the publication of *Table Talk* provided him with a living until about 1902, when Brodzky was declared insolvent as a result of his failure to pay a verdict recovered against him in a libel action by F.H. Bromley, M.L.A. This was the end, in Victoria, of Brodzky's provocative and sometimes brilliant journalism. Early in his career, as has been previously indicated, he published two booklets, one being a useful brief history of the Melbourne synagogues, while the other was a novelette, caricature type biography of Dr. David Hailperin, entitled *Genius, Lunacy and Knavery*. This last-named effort, written around the life of an apparently eccentric colonial physician and Jewish scholar, showed Brodzky to be a very imaginative writer, even if the immediate result might be regarded as a cheap skit on orthodox Judaism. It is, therefore, by no means strange that the Jewish community offered no scope for Brodzky's talents and that he seems to have made no impact within that community. In 1896, for example, he is recorded as being in attendance at the first annual meeting of the new United Jewish Education Board. Given permission to address the meeting, he remarked that no place in the whole world was so badly served as Melbourne in Jewish educational matters. Stating — amidst dissent — that the average possessions of Jews in Melbourne were higher than elsewhere, Brodzky deplored that Jewish children were being educated in Christian colleges, away from Jewish influences. "Where was the better class Jewish boy," the speaker asked, "to get his spiritual and moral instruction?" Brodzky was finally ruled out of order by the Chairman, P. Blashki, when he suggested that the Board's laws be altered to permit it to provide secular as well as Hebrew and religious instructions. The speaker, the Chairman pointed out, seemed to be travelling beyond limits in his discussion and he was decidedly of the opinion that the meeting had to consider the annual report and not the laws of the Board. The Chairman also acted very firmly when he stated that he would decline to take any part in the work of the Board if the Attorney-General, the Hon. I.A. Isaacs was re-elected as President, seeing that "from the eminence of his position and the great pressure of his private affairs", Isaacs had not been able to devote any attention to the needs of the Board. Isaacs was nominated as President by Edward Marks and

Moritz Michaelis and a ballot was taken, the Rev. Dr. Abrahams acting as one of the scrutineers. In the result, Blashki was declared elected as President. Amongst those elected to the Committee were Theodore Fink and M. Brodzky. The meeting was poorly attended and perhaps Fink secured Brodzky's appointment to the Committee. Shortly afterwards, the United Education Board created the position of Patron, and a deputation consisting of Dr. Abrahams, Rev. Blaubaum, Rev. J. Lenzer and Maurice Brodzky failed to induce Isaacs to allow his name to appear on the report and circulars of the Society as patron. Isaac's brother John, who was then member of Ovens in the Assembly, is recorded as withdrawing his support from the Education Board at this time.⁵² It may be inferred that Isaac Isaacs was resentful of the opposition towards him by Blashki and others. He was undoubtedly, as Sir Zelman Cowen mentions, a man of enormous energy, but his connections with the Jewish community and religious life became quite tenuous — a conclusion properly and fairly drawn by that distinguished author.

NOTES

1. S.H. Roberts, *The Squatting Age in Australia*, (1935), p.248; J.B. Cooper, *Victorian Commerce, 1834-1934*.
2. *Sydney Herald*, 16 October 1843
3. N.S.W. Governors' Despatches, Vol.44, which includes Select Committee's Report on the Insolvent Act and Minutes of Evidence
4. S.H. Roberts, *supra*, pp.224-233
5. Robert Caldwell, *The Gold Era of Victoria*, pp.239-247; James Griffin, *Essays in Economic History of Australia 1788-1939*, at p.119, *The Golden Decade* by Richard Cotter
6. Caldwell, *supra*, p.44
7. Ambrose Pratt, *The Centenary History of Victoria* (1934); J. Smith, *Cyclopedia of Victoria*, Vol.1 pp.50-51
8. L.M. Goldman, *The Jews in Victoria in the 19th Century*, p.277
9. Goldman, *supra*, p.178
10. A.J. Smithers, *Sir John Monash*, (1973), p.16; Cecil Edwards, *John Monash* (1970), pp.3-7
11. *The Discovery of the Woods Point Goldfield* by H.J. Stackepole, *The Victorian Historical Magazine*, Vol.37, pp.50-72
12. A.J.H.S. *Journals*, Vol.8, pp.51-77; Vol.5, pp.238-39; Levi & Bergman, *Australian Genesis* (1974), p.203
13. J. Smith, *supra*, pp.50-52
14. A.J.H.S. *Journal*, Vol.1, p.310
15. *Australian Dictionary of Biography*, Vol.3, p.154, Sir Graham Berry by Geoffrey Bartlett
16. A.D.B., Vol.6, p.109, James Service by Geoffrey Serle

17. Cannon (1967), p.29
18. Ibid, p.148
19. A.D.B., Vol.4, pp.168-69, B.J. Fink by Michael Cannon; see also, Obituary by Archie Michaelis in A.J.H.S. Journal, Vol.1, pp.255-56. I am informed by Isidor Solomon of Melbourne, that B.J. Fink was 62 years of age when he died at Port Said, en route to Australia. His ashes were placed in an elaborate memorial in the Jewish section of the Melbourne General Cemetery at Carlton. His epitaph reads: "Sleep after a life of toil and suffering" (J. Solomon, Melbourne Hebrew Congregation Newsletter, Sept. 1971, p.7)
- 19a. For biographical details of B.J. & T. Fink, see Table Talk, 9 Dec. 1892; 12 May, 1893
20. Cannon, Land Boomers, p.145
21. Ibid, p.143, 146
22. Ibid, p.235, note 208
23. Treatise On Insolvency Law, at p.5
24. Ibid, p.2
25. A.J.H.S. Journal, Vol.4, by R. Apple; Vol.1 by Victor Cohen, p.80, p.208
26. Parliamentary Debates, Victoria, Vol.81 (1896), pp.543-554
27. Ibid, Vol.83, p.2520; A.D.B., Vol.5, p.83 by L.E. Fredman
28. Ibid, Vol.83, pp.3437-39; see A.D.B., Vol.5, pp.82-83, Nathaniel Levi by L.E. Fredman
29. Age, 8 Oct. 1897
30. Herbert S. Goldstein, Between the Lines of the Bible, pp.39-40
31. A.J.H.S. Journal, Vol.8, p.111 by M. Lazarus
32. Goldman, supra, p.373
33. Cannon, A.D.B., Vol.4, p.169
- 33a. George Mendell, The Pleasant Career of a Spendthrift, pp.26-27
34. Cannon, Land Boomers, p.212
35. Ibid, p.213
36. Ibid, pp.211-213
37. Melbourne Herald, 23 March 1849
38. Ibid, 8 March, 1849
39. Ibid, 6 March, 1849
40. W, W & A'B (1864), 45 (I)
41. 6 V.L.R. (1880) 56
42. II V.L.R. (1876)
43. (1890) V.L.R. 706
44. 17 V.L.R. (1891) 351
45. 20 V.L.R. (1894) 223
46. The Australian Hebrew, Vol.1, 14 Feb. 1896
47. A.D.B., Vol.7, pp.419-20
48. Age, 12 April, 1893
49. Ibid, 14 April, 1893
50. Isaac Isaacs by Zelman Cowen, p.26
51. Age, 15 April, 1893
52. The Australian Hebrew, Vol.1, pp.308, 370