FIRST REPORT ON THE BILL TO QUALIFY JUSTICES OF THE PEACE.

And moreover since the Justices of the Peace are invested with great powers, which they may exceed or abuse to the vexation of His Majesty's Subjects, the Law justly requires that they should be possessed of sufficient property to answer to their fellow subjects for the consequences of such excess or abuse of their authority, and by so doing provide, inasmuch as is possible against such abuses, and secures a remedy for those which it cannot prevent.

Your Committee have remarked that between the years 1759, and 1774, the Criminal Law of *England* was considered binding in *Canada*, in as far as regarded its general provisions; so that the English Law was consulted in respect to the definitions of Crimes and Criminal Offences, and the mode and measure of their punishment, while the great principle of the Law—the Trial by Jury—was universally respected. But in the details of the Administration of Justice, the manners of *Canada*, its Institutions and usages having all relation to an order of things wholly foreign to the English Laws, an accommodation to circumstances became necessary and an approximation to the English forms, so far as those circumstances would permit, was acceded to. The King, the Legislator of *Canada* by virtue of his Prerogative, necessarily left to the *Canadian* Judges a discretionary power which the State of the Country rendered indispensible, and the Royal Proclamation of 7th October 1763, commanded that Courts of Judicature should be constituted, for hearing and determining Civil and Crim nal matters according to Law and Equity—approximating as nearly as possible to the Law of *England*.

At this early period of the existence of the English Criminal Law in *Canada*, it was not to be expected that a sufficient number of persons qualified according to the Laws of *England*, for the important Office of Justice of the Peace should be found in *Canada*. Justices of the Peace were nevertheless necessary, as without their Ministry the Criminal Law in very numerous cases could not have been carried into effect. Officers were required to superintend the Police of the Towns and to perform various special functions with which it was not expedient to charge the Officers of the Superior Courts, and which in *England* the Laws assign to the Justices of the Peace.

The Government therefore appointed Justices of the Peace, who under the denomination of Justices of the Peace and of Commissioners of the Peace, exercised the general powers of Justices of the Peace, and were by several Ordinances invested with various functions and special powers—but no qualification was required of them, because the matter would at that time have been very difficult if not wholly impossible, and because the Criminal Law of *England*, was then absolutely obligatory only in so far as circumstances and the situation of the Country permitted.

In 1774 the British Parliament passed the *Quebec* Act 14, *George* III. chap. 83, by which it was enacted that the Criminal Law of *England*, should continue to be administered, and shall be observed as Law in the Province of *Quebec*, as well in the description and quality of the offence as in the method of prosecution and trial, and the punishments and forfeitures thereby inflicted, to the exclusion of every other rule of Criminal Law. The Criminal Law of *England*, as it stood in 1774, is absolutely in force in this Province, and the Office of Justice of the Peace, an accessary of these Laws and created by them, must therefore be therein on the same footing as in *England*, in all respects in which it is not impossible that it should be so placed.

Thus in *Canada* the provision of the Act 34, *Edward* III. chap. 1, requiring that there be a Peer among the Justices of the Peace in each County cannot assuredly be carried into effect.

Thus also—in *Canada* it is impossible that the Justices of the Peace should be appointed with the consent of the Lord Chancellor as is required in *England* by the Statute 2, *Henry* V, Session 2, chap. 1. But the English Statutes, by which the Office of Justice of the Peace was established, as well as those by which the general powers of the Justices in Criminal matters were given, being certainly in force and acted upon in *Canada*, your Committee see no reason why the English Statutes which fix the qualification required in those who hold the important rank in the magistracy of the Country should be considered in this Province as a dead Letter; for the Statute of the 14, *George* III. having established the English Criminal Law without distinction in *Canada*, no man has the right of saying that any particular part of that Law, shall be considered as not regarding this Province; "*Ubi lex non distinguit, nec nos distinguere debemus.*" It was undoubtedly the intention of the British Parliament to confer upon the people of *Canada*, all the advantages and security which the English Criminal Law is calculated to afford, and your Committee believe that the appointment of Justices of the Peace, qualified as they are required to be in *England*, would secure those advantages and that security to the people, of which they cannot feel assured while under the control of an unqualified magistracy, appointed in an arbitrary manner, and who wanting possibly the qualities necessary for doing good, and the means of repairing the evils their conduct might induce, would be liable to fall into contempt, and to excite serious discontent by vexatious proceedings, for which His Majesty's subjects could have no hope of obtaining redress. Your Committee have observed that the English Statutes made for the purpose of affording protection to the Justices of the Peace are considered by the Courts of Justice in this Province as being in force here. Thus by the Statute 7 *James* 1, chap. 5, a Justice may plead the general issue in any action brought against him for any Act done by him in his official capacity, and prove under it the particular facts upon which his defence is founded, and if the action against him be dismissed, he shall recover double costs by the Statute 21 *James* 1 chap. 12.

The Justices of the Peace in *Canada*, take advantage of the prescription of six months, introduced in their favor by the English Statute 24 *George* II, chap. 44, and by the same Statute no action can be brought against a Justice of the Peace for any Act done by him in his official capacity, unless a month's previous notice of such action shall have been given him. Your Committee are of opinion that these Laws are really in force in this Province, having been introduced here with the Office of Justice of the Peace to which they have relation, which office might otherwise become too burthensome to those who hold it; but for the same reasons, your Committe are of opinion that the English Statutes concerning the qualification of Justices of the Peace ought also to have the force of Law in this Province, and that without them the office would be dangerous and bear heavily upon his Majesty's Subjects.

The whole nevertheless humbly submitted.

(Signed) VALLIERES DE ST. REAL,
Chairman.