

The next report of Council is that of the 5th August, 1840, made by the Honorable Messrs. Steward, Cochrane, Pemberton, Sheppard, Daly, and Com. General Routh. From the important bearing it has upon the case, and the subsequent allusion to it in the Reports of Council, it will be necessary to enter minutely into the facts assumed by it as having been established and the grounds and reasons of its adverse decision.

This claim was again brought under the consideration of Council on the 19th December, 1842. The Committee again recur to the unprovidence of the grant, the determination of the Government to withhold possession, and to the fact that no expenditure had been made upon the lot by the grantee, and that the claim had been allowed to sleep for a long time, and they concur in the Minute of Council, of the 5th August, 1840, declaring that the claim for compensation should be no further entertained. They, however, conclude by stating that if Her Majesty's Government entertain the claim for compensation there are no Provincial Funds out of which remuneration could be made, and that, consequently, Her Majesty's Ordinance should pay the amount.

On the 21st September, 1846, the rights of the Holland Family were reconsidered by the Government upon the memorial of Mr. Wilson. The Committee of Council on that occasion declare that they agree in the Report of Council of the 5th August, 1840, on the grounds—that the original grantee lived in Quebec until the year 1800, without having made any improvement on the lot before General Haddimund took possession of it, that it is immaterial to the present claim whether he did so forcibly or otherwise, that Major Holland did not complain nor ask for an indemnity, that Government having kept possession ever since, they are at a loss to understand upon what ground the Earl of Durham's Council entertained the claim. They cite the terms of reservation, and they lay down as Law, that because, in the event of the Government using the said lot of ground with the messuages, &c., thereon for Barracks or other uses, an indemnity is stipulated to the grantee for the value of the buildings which might happen to be thereon; that it is clearly shewn that the ground itself could never be made a matter of valuation nor give rise to any claim for indemnity in case of resumption. That, therefore, until Mr. Wilson should have proved that he has made improvements, he has no claim.

O. C. IN FAVOR OF CLAIM.

It would appear then that the claim of the heirs, Holland, was entertained and fully entered into by the Council, of the Earl of Durham, and a decision come to on the 29th October, 1838, declaring it to be clearly established.

It is also evident by the terms of the orders in Council of the 26th October, 1839, and 27th June, 1840, that the demand was entertained and considered by the Governments of those days and received a quasi sanction from them inasmuch as they order a further report to be had from the military authorities for the purpose of ascertaining the precise extent of ground comprised within that claim.

O. C. ADVERSE AND GROUNDS.

The remaining Orders in Council are adverse to the claim and it is therefore necessary to review the grounds of their respective decisions, taking them up in their natural order and without more particular reference to each order in Council. They are as follows:—

- 1st.—The improvidence of the grant which was asserted at an early period.
- 2nd.—That the ground was never used by the grantee.
- 3rd.—That no buildings were erected, nor any improvements or expenditure made upon the lot.
- 4th.—That the parties have not proved any possession.
- 5th.—That the determination of the government to withhold possession was intimated at a very early period.