

GENERAL HEADS.

In order to arrive at a full and final determination of this claim, five points present themselves for consideration :—

- 1st.—The validity of the title.
- 2nd.—The effect of the reservation contained in it.
- 3rd.—In the event of the claim being admitted, and of the parties agreeing to surrender their rights for a compensation, the value of the area granted, and of its occupation by the Government since 1766.
- 4th.—The funds out of which such compensation is to be paid, whether out of the Imperial or Provincial Treasury, or partly out of one and partly out of the other.
- 5th.—The parties entitled to claim.

TITLE.

The first point to be taken up is obviously the validity of the original title or letters patent by General Murray to Major Holland. On this head it must be at once conceded, that however unwise or improvident it may be deemed, the validity of the grant does not appear ever to have been impugned, nor is there to be found any suggestion of fraud, misrepresentation, or other ground upon which it could be attempted to be set aside in a Court of Justice.

RESERVATION CLAUSE.

The second point, the effect of the reservation in the letters patent, is one not to be so readily or so easily disposed of as the first, but it is nevertheless perfectly susceptible of solution when dealt with on legal and just principles. The reservation is in the following words, viz. :— “ Provided also, and reserving unto us, our heirs and successors, *whenever our or their service may require*, our or their right of *using* the said lot of ground, with the messuages, houses, and buildings thereon, for *barracks or other uses*, paying to him the said Samuel Holland, his heirs, executors, administrators, or assigns, a reasonable price for any improvements, messuages, dwelling houses, and buildings which may happen to be made, erected, standing or being thereon.”

REPORTS OF COUNCIL.

On reference to the various Reports of Council on this claim, it will be found that the first was that of the Earl of Durham, on the 29th October, 1838, which enters fully and ably into the whole matter.

The next report of Council is that of the 26th October, 1839. The Committee of Council recommend, that in order to enable them to judge of the extent of the ground that may be necessary to serve for the Battery and other military purposes, the Commanding Royal Engineer be called upon for a survey and plan of the Garden, shewing the extent of the grant and the locality of the Battery, and the exact quantity of the ground claimed by the Holland family which may be required for military purposes.

The Report of Council of the 27th June, 1840, after referring to the opinion of the Commanding Engineer of the 18th December, 1839, which was to the effect that the whole of the Garden *ought to be* retained and also to the Report of Council of the 29th October, 1838, containing the opinion of the Engineer Officers of that day that a very considerable portion of the Garden was not required for the Battery, declares that it was necessary to ascertain the precise extent of ground comprised within the claim of the Holland family, and they recommend a further Report on that head.

	Acre.	Rods.	Ponches.	Yards.
On the 18th July following, Colonel Oldfield reported the				
area claimed by the heirs, Holland, to be.....	1	2	34	11½
That required for maintaining the Battery.....	1	0	8	23½
Leaving an area claimable by the Holland Family of . . .	0	2	25	18¼

equal to 28,700 superficial square feet.