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TO PRIORITY FCO

TELEGRAM NUMBER 318 OF 1 JULY

ms.

CANADIAN CONSTITUTION

1. I DISCUSSED THIS YESTERDAY WITH PITFIELD, CLERK OF THE PRIVY COUNCIL AND SECRETARY OF THE CABINET IN THE LIGHT OF MR TRUDEAU'S TALK WITH THE PRIME MINISTER ON 26 JUNE. IT WAS VERY HELPFUL TO ME TO HAVE HAD YOUR TELNO'S 202 AND 204. HIS EXPECTATIONS ABOUT WHAT WAS PRACTICABLE IN LONDON DID NOT SEEM TO ME REASONABLE, BUT IN VIEW OF HIS KEY POSITION AND HIS CLOSENESS TO MR TRUDEAU I AM REPORTING EXACTLY WHAT HE SAID.

2. PITFIELD SAID THAT IF THE COURT DID HAND DOWN A JUDGEMENT SUPPORTING THE FEDERAL GOVERNMENT ON 7 OR 8 JULY HE WOULD AT ONCE CONSULT MR TRUDEAU AND THEN RING SIR ROBERT ARMSTRONG WHO WOULD, HE EXPECTED, CONSULT THE PRIME MINISTER AND RING HIM BACK SAYING WHAT HMG WERE PREPARED TO DO. THIS WAS BECAUSE WHEN WE HAD THE JUDGEMENT "WE MUST CAUCUS". (IN FACT SIR ROBERT ARMSTRONG MAY AT THAT TIME BE IN CANADA FOR THE SUMMIT PREPARATORY MEETING AT MONTEBELLO FROM 6-8 JULY.) THOUGH HE AND MR TRUDEAU RECOGNISED OUR DIFFICULTIES THEY STILL HOPED THAT DESPITE THESE IF WE RECEIVED THE REQUEST BY ABOUT 10 JULY WE WOULD BE ABLE TO PUT IT THROUGH BOTH HOUSES BEFORE THEY ADJOURNED FOR THE SUMMER RECESS. THIS WAS BECAUSE A DELAY TILL NOVEMBER OR THEREABOUTS WOULD BE FRAUGHT WITH DANGER FOR BOTH GOVERNMENTS. HE SPOKE OF THE RISKS OF REFERENDUM

BOTH HOUSES BEFORE THEY ADJOURNED FOR THE SUMMER RECESS. THIS WAS BECAUSE A DELAY TILL NOVEMBER OR THEREABOUTS WOULD BE FRAUGHT WITH DANGER FOR BOTH GOVERNMENTS. HE SPOKE OF THE RISKS OF REFERENDUM CAMPAIGNS IN THE PROVINCES (AS MR TRUDEAU DID TO THE PM) OR OTHER TACTICS AND OF SCOPE FOR WRECKING ACTIVITIES BY PEOPLE LIKE CLAUDE MORIN OF QUEBEC. HE SAID THAT TO HIM IT WAS UNTHINKABLE THAT THE BRITISH PARLIAMENT SHOULD NOT DO WHAT THE CANADIAN GOVT. WANTED IF THEY WERE SUPPORTED BY COURT.

3. I SAID THAT SPEAKING PERSONALLY IT SEEMED TO ME THAT IN THE LIGHT OF WHAT THE PRIME MINISTER AND THE LORD PRIVY SEAL HAD TOLD MR TRUDEAU IT MIGHT BE BETTER IF THE THE REQUEST WERE NOT SENT TO US UNTIL OCTOBER. PITFIELD ASKED WHEN WE PLANNED TO PUBLISH OUR REPLY TO THE KERSHAW REPORT. I SAID NOT BEFORE THE JUDGEMENT. CAN I TELL HIM WHEN WE WOULD PLAN TO PUBLISH IF THE COURT DOES RULE EARLY NEXT MONTH?

4. PITFIELD THOUGHT THAT IF THE COURT DID PRODUCE A FAVOURABLE RULING THE CANADIAN GOVT WERE BOUND TO PROCEED. WHETHER THEY COULD SIT ON THE REQUEST UNTIL THE AUTUMN WOULD HAVE TO BE DETERMINED BY THE CABINET. THE CANADIAN PARLIAMENT WAS LIKELY TO SIT UNTIL 10 OR 12 JULY.

5. HE REVERTED TO FLESH CREEPING REMARKS ABOUT THE DIRE CONSEQUENCES OF ANY FAILURE ON OUR PART TO COMPLY WITH THE CANADIAN GOVT'S WISHES, AT ONE POINT SAYING THAT IF WE DID NOT COMPLY WE WOULD HAVE A TRANSATLANTIC ULSTER ON OUR HANDS (THIS SEEMES TO ME FAR-FETCHED.)

6. I TOLD HIM THAT THINGS WOULD UNDOUBTEDLY BE EASIER FOR US IF THE COURT'S DECISION WAS CLEAR CUT. HE WONDERED WHAT WE WOULD REGARD AS CLEAR-CUT. SIR ROBERT ARMSTRONG HAD TOLD HIM THAT A 6-3 VOTE MIGHT BE ALL RIGHT BUT 5-4 WOULD BE MORE TRICKY. IF THE JUDGEMENT WERE MURKY THEN WHAT MATTERED, AND WHAT WE MUST PAY ATTENTION TO, WAS THE CANADIAN GOVERNMENT'S INTERPRETATION OF IT. THAT COULD NOT BE CHALLENGED. WE MUST NOT LOOK BEHIND THE CANADIAN GOVT. BUT HE DID NOT THINK THE JUDGEMENT WOULD BE CLOUDY. ON PAST FORM THE ANSWER TO SUCH A REFERENCE WAS USUALLY A CLEAR YES OR NO.

7. IF THE ADVICE THEY RECEIVED THROUGH SIR ROBERT ARMSTRONG WAS TO POSTPONE THE REQUEST TILL THE AUTUMN THEY WOULD HAVE TO CONSIDER THIS. IN THAT EVENT IT MIGHT HELP IF WE COULD (A) PUBLISH OUR REPLY TO KERSHAW (B) TAKE A RATHER MORE POSITIVE LINE IN MINISTERIAL STATEMENTS THAN HITHERTO (IE AN ADVANCE ON THE " DEAL WITH IT AS EXPEDITIOUSLY AS POSSIBLE " FORMULA.) BUT THERE WERE COMPLICATIONS.

STATEMENTS THAN HITHERTO (IE AN ADVANCE ON THE " DEAL WITH IT AS EXPEDITIOUSLY AS POSSIBLE" FORMULA.) BUT THERE WERE COMPLICATIONS. FOR EXAMPLE FROM 20 SEPT TO 18 OCTOBER THEY WOULD BE AWAY FOR THE COMMONWEALTH MEETING IN AUSTRALIA.

8. PITFIELD EMPHASISED AGAIN THAT TRUDEAU WITH WHOM HE HAD JUST BEEN CLOSETED STILL CLUNG TO THE HOPE THAT IT WAS NOT ENTIRELY OUT OF THE QUESTION THAT WE WOULD GET IT THROUGH BY THE END OF JULY. I POINTED OUT THAT THE LORD PRIVY SEAL HAD TOLD MR TRUDEAU THAT THERE WAS NO HOPE OF THIS. PITFIELD WONDERED IF THIS WAS REALLY THE LAST WORD. IT WOULD BE IN THE STRONG INTERESTS OF BOTH GOVTS TO GET IT OVER AND DONE WITH. I SAID MINISTERS COULD HARDLY DECIDE UNTIL THEY SAW THE COURT JUDGEMENT. HE ACCEPTED THIS BUT ASKED IF THERE WAS A GLIMMER OF HOPE OF EARLY ACTION IF THE COURT CAME OUT LOUD AND CLEAR. IS THERE? IF NOT, AND WE HAD TO DELAY TILL NOVEMBER WE MUST HE SAID BOTH RECOGNISE THAT THE SITUATION WAS "LIKELY TO BE NASTY". AT SOME POINT HMG MUST MAKE UP THEIR MINDS. WHATEVER THEY DID THEY WERE BOUND TO BE CRITICISED. WE SHOULD RECOGNISE THAT ALL CANADIANS WANTED THE CONSTITUTION BACK. BY EVERY NORMAL CRITERION THE TRUDEAU GOVT SHOULD BE IN DEEP TROUBLE WITH HIGH INFLATION AND HIGH INTEREST RATES. BUT IT WAS NOT. WHY? BECAUSE OF NATIONAL POPULAR SUPPORT FOR ITS ATTITUDE ON THE CONSTITUTION. THEREFORE IT WOULD PLAY ON THAT.

PLEASE PASS COPY TO SIR ROBERT ARMSTRONG.

MORAN

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