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Sessional Papers (No. 4.)

A. 1896

CANADA

ESTIMATES

FOR THE

FISCAL YEAR ENDING 30TH JUNE

1897

(Second Series)

PRINTED BY ORDER OF PARLIAMENT



OTTAWA

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EXCELLENT MAJESTY

1896

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RETURN

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To an ADDRESS of the HOUSE OF COMMONS, dated 28th August, 1896, for copies of all correspondence between His Excellency the Governor General and Sir Charles Tupper, respecting certain proposed appointments and Orders in Council.

By order.

R. W. SCOTT,
Secretary of State.

MEMORANDUM FOR THE PRESIDENT OF THE PRIVY COUNCIL.

- A. Memorandum from the Governor General to Sir Charles Tupper and his colleagues, under date 4th July, 1896.
- B. Memorandum from Sir Charles Tupper to His Excellency the Governor General, under date 6th July, 1896.
- C. Memorandum from His Excellency the Governor General in reply, under date 9th July, 1896.
- D. Memorandum from the Governor General's Secretary of the 10th June, 1896, *re* Payne's Examination.
- E. Memorandum of the Governor General's approval of Treasury Board Minutes, 2611, 2612, 2613, 2614, 2640, 2653, submitted on the 6th and 7th July, 1896, dated 8th July, 1896.
- F. Memorandum of returned submissions from the Governor General, dated 11th July, 1896.
- G. Memorandum of the return of Documents recently before the Governor General, dated 11th July, 1896.
- H. Sir Charles Tupper's acknowledgment, dated 13th July, 1896, of His Excellency's Memorandum of the 9th July, 1896.

JOHN J. MCGEE,
Clerk of the Privy Council.

PRIVY COUNCIL OFFICE,
24th August, 1896.

MEMORANDUM TO THE PRIME MINISTER FOR HIMSELF AND HIS COLLEAGUES.

Until July the 7th as at present arranged, it is not likely that we shall know whether or not you deem the results of the General Election decisive against the Government, nor do I know to what extent these results may be modified by that date which you name as final in this regard.

After taking every means in my power to inform myself, it is impossible for me to ignore the probability that in the event of your deciding to meet Parliament the present Administration will fail to secure the support of the House of Commons.

This hypothesis seems to me to have important bearings.

In the first place, the business to be transacted by Parliament, though foreseen and not in character exceptional, is urgent. The supplies for the public service are already entirely exhausted. This contingency was in view when the date of the meeting of Parliament was fixed. It is in the public interest that Parliament shall meet on as early a day as possible, and be able to proceed to business forthwith.

Again, in regard to the various recommendations which in detail or by inference we discussed on Thursday, and in regard to all business which is not urgent and yet outside routine administrative requirements, the assumption that the Government has failed to secure the confidence of the electorate at the polls, leaves undiminished, indeed, increases the stringency of the limitations of an already somewhat peculiar position.

Let me explain my meaning. The circumstances are these:

The previous Administration (with Sir Mackenzie Bowell as Prime Minister), representing the views of the same political party and having a majority in both chambers, failed to pass its proposed legislation, and on the 25th of April Parliament expired by efflux of time, without having granted supplies for the public service beyond the 30th of June. Subsequently, when no Parliament was or could be, under the circumstances, in existence, the present Administration was formed. So far, therefore, as these are dependent upon the subsequent approval of Parliament, the acts of the present Administration are in an unusual degree provisional. And as the powers of an Administration undoubtedly full and unrestricted, must surely always be used with discretion, their exercise would seem to be rightly limited, under such circumstances as the present, to the transaction of all necessary public business, while it is further a duty to avoid all acts which may embarrass the succeeding Government.

On this ground I would ask your further consideration of some of the recommendations which we discussed incidentally on Thursday. On this ground too, I felt obliged to withhold the expression of my acquiescence in your suggestion as to the appointment of Senators or Judges. (You have since then laid before me certain recommendations as to Senatorships which are vacant).

These are life appointments, and with them, under such circumstances as the present, it would seem proper to leave all other life appointments, and the creation of all new offices and appointments for the consideration of the incoming Ministers, unless always such a course is shewn to be contrary to the public interest.

In the case of the Senate, which consists of seventy-eight members, it is to be noted also that there are said to be now no more than five Senators who are Liberals. And it may well be urged that to aggravate this inequality at the present time would not only tend to embarrass the probable successor of this Government, but to increase the risk of friction between the two chambers of the Legislature.

In the case of Judges, I will only add that, bearing in mind the ordinary length of their tenure of office and also the long political predominance of one political party in the Dominion Parliament, the current deduction as to the complexion of the political opinions represented upon the Bench, whether baseless or well founded is not unnatural.

As to the remaining recommendations which are before me, and generally as to other business of a similar nature, all seem to me to be subject to the same governing consideration. Whatever business can wait without detriment to the public interest, may properly do so.

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There is a recommendation of a refund of money which requires the sanction of Parliament. Such recommendations will have to be placed before Parliament by the Ministers of the day; and you may perhaps consider that they may be left to be dealt with by these Ministers.

In Mr. Payne's case my special concern is indicated in the latter part of the Memorandum of the Governor General's Secretary of the 10th June where the question is asked whether this appointment is in accordance with the Statutes and Regulations which govern such cases, *i.e.* whether it infringes upon an existing law, under which circumstances, it, with any other cases of a similar kind if there be any such, cannot properly receive sanction.

I mention another case, *viz.*: the recommendation of an officer to the post of Assistant Superintendent of the Cartridge Factory at Quebec. This position has been vacant for two years. It seems, therefore, desirable to reserve it, with any other similar recommendations as to vacancies of long duration for the consideration of the incoming Government, unless this course can be shown to be detrimental to the public interest.

One other matter remains to which you asked my attention yesterday, and which it may be convenient that I should mention here. I refer to your remarks on the Memoranda which I have from time to time forwarded for the consideration of Council. I have carefully considered these remarks, and my conclusions and observations are as follows:—

On referring to the books of the Governor General's office I find that the Memoranda sent by my predecessors are similar in form to those which I have caused to be sent. As to the recording of such communications, this has evidently been done in the past. My own experience certainly makes me think that this is proper and desirable and contributes to continuity of Government. As to the accessibility of such papers to successive cabinets, it must be borne in mind that, whether specifically so described or not, all such papers are essentially confidential. Their contents are made known only to those who are bound by oath of secrecy, and they cannot be laid before Parliament except with the consent of the Governor General. I fail, therefore, to see that there has lately been any departure from precedent or from practice in this matter.

These observations will indicate to you in the meantime the result of such consideration as I have so far been able to give to the business now before me.

(Signed) ABERDEEN.

Government House,
Ottawa, 4th July, 1896.

MEMORANDUM.

To His Excellency the Governor General:—

I have carefully considered Your Excellency's memorandum, dated July 4th, received at 1 p.m. to-day, which, I must frankly say, has caused my colleagues and myself much surprise and regret.

So soon as Your Excellency had returned to the Capital (the 2nd inst.), I had the honour of waiting upon you and discussing the present condition of affairs, caused by the general election which took place on the 23rd June. At that time I submitted a memorandum of precedents, indicating the practice followed in England and Canada on the defeat of a government. I explained that the division of parties was very close, and might be materially affected by the recounts which were to take place within a few days, as there were a large number of elections in which the parties had been declared elected by a very small majority. I suggested that the discussion of the course to be pursued by the Government should be deferred until after that recount had taken place, to which Your Excellency assented.

As Your Excellency had not returned, a large number of the Minutes of Council which had been sent for your approval, both before and since the elections were held, I submitted for your consideration a memorandum of appointments made by the Hon. Mr. Mackenzie between the date of his defeat on the 17th September, 1878, and his resignation on the 16th October following. Your Excellency intimated the intention of asking me further to confer with you on the following day, after you had had an opportunity of perusing the papers to which I have referred. Your Excellency subsequently postponed that interview until the morning of Saturday, the 4th inst., and to-day favoured me with the memorandum to which I have now the honour to reply.

Your Excellency says that the supplies for the public service being exhausted, it is in the public interest that Parliament should meet as early as possible. You add that,—

“The previous Administration (with Sir Mackenzie Bowell as Prime Minister), representing the views of the same political party, and having a majority in both Chambers, failed to pass its proposed legislation, and on the 25th April, Parliament expired by efflux of time, without having granted supplies for the public service beyond the 30th June. Subsequently, when no Parliament was, or could be, under the circumstances in existence, the present Administration was formed. So far, therefore, as these are dependent upon the subsequent approval of Parliament, the acts of this Administration are, in an unusual degree, provisional.”

Your Excellency is aware that the failure to pass the supplies in the usual manner for the now current year was due to the fact that the life of Parliament terminated on the 25th April, and that the Opposition took advantage of that circumstance to pursue a course of unparalleled obstruction, which enabled them to prevent any legislation being carried through by the Government, although it had the support of a large majority of the House of Commons, and that the day of the next meeting of Parliament was fixed at the earliest possible moment that it could safely be done.

Your Excellency says:—

“In regard to the various recommendations, which in detail or by inference we discussed on Thursday, and in regard to all business which is not urgent, and yet outside routine administrative requirements, the assumption that the Government has failed to secure the confidence of the electorate at the polls leaves undiminished, indeed increases, the stringency of the limitations of an already somewhat peculiar position.”

Your Excellency further says:—

“As the powers of an Administration undoubtedly full and unrestricted must surely always be used with discretion; their exercise would seem to be rightly limited, under such circumstances as the present to the transaction of all necessary public business, while it is further a duty to avoid all acts which may embarrass a succeeding Government.”

On this ground Your Excellency says that you feel obliged to withhold the expression of any acquiescence in my recommendations as to the appointment of Senators or Judges. You observe:—

“These are life appointments, and with them under such circumstances as the present, it would seem proper to leave all other life appointments and the creation of all new offices and appointments for the consideration of the incoming Ministers, unless always such a course is shown to be contrary to the public interest.”

Your Excellency goes on to remark:—

“In the case of the Senate which consists of seventy-eight members, it is to be noted also that there are said to be now no more than five Senators who are Liberals.” And further:—

“In the case of Judges, I will only add that bearing in mind the ordinary length of their tenure of office, and also the long political predominance of one political party in the Dominion Parliament, the current deduction as to the complexion of the political opinions represented upon the Bench, whether baseless or well founded, is not unnatural.”

I should fail in my duty to Your Excellency as well as to the principles which govern the administration of public affairs in Canada, where Parliamentary Govern-

ment is carried out very serious action on the part of the Government beyond dispute 512, says:—

“The vote in the election, it is said, has met the views of the House of Commons, and the Government should be satisfied. And on page 512, says:—

“For, no doubt, the conduct of the Government, the seals of office, and functions, until their success. And on page 512, says:—

“It was a great success, and predecessors in the same position sealed on the same day.”

“In 1858, the Governor was appointed, which were the same. And in 1866, up by that Government had been the exercise of the only be justified. And on page 512, says:—

“The Disfranchisement of the Governor General, Liberal press, in the House of Commons, the elections; —on the Budget.

In 1859, the polls by 350 to 310, defeated by a narrow margin. In 1892, the votes for the year 40; but he did 350 to 310.

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“It has, however, the vote of censure limited number, but admittedly rendered political.”

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ment is carried on precisely as it is in England, if I did not draw your attention to the very serious consequences of the views which you have indicated as guiding your action on the present occasion. The recognized authorities on Parliamentary Law, and the practice both in England and in Canada have, I contend, settled these questions beyond dispute. Todd, in his "Parliamentary Government in England" Vol. II, p. 512, says:—

"The verdict of the country having been pronounced against Ministers at a general election, it is nevertheless competent for them to remain in office until the new Parliament has met and given a definitive and final decision upon their merits; for the House of Commons is the legitimate organ of the people, whose opinions cannot be constitutionally ascertained except through their representatives in Parliament. It is necessary, however, and according to precedent, that, under such circumstances, the new Parliament should be called together without delay."

And on page 513:—

"For, notwithstanding their resignations, the outgoing Ministers are bound to conduct the ordinary business of Parliament and of the country so long as they retain the seals of office. They continue, moreover, in full possession of their official authority and functions, and must meet and incur the full responsibility of all public transactions until their successors have kissed bonds upon their acceptance of office."

And on page 514:—

"It was always the practice to fill up vacancies. Peerages promised by a Minister's predecessors in office had been granted, though no instrument had been signed or sealed on the subject."

* * * * *

"In 1858, Lord Palmerston, after his tender of resignation, and before his successor was appointed, allotted three of the highest honours of the Crown—three Garters—which were then unappropriated, to three eminent noblemen, his friends and supporters. And in 1866, upon the dissolution of the second Russell Ministry, an office was filled up by that Government which did not become vacant until two days after their resignation had been tendered to Her Majesty. The interference of Parliament with the exercise of the prerogative under such circumstances has never taken place, and would only be justifiable under circumstances of a flagrant character."

And on page 515:—

"The Disraeli Ministry (after its defeat in 1869) appointed the Earl of Mayo to be Governor General of India; but this appointment, though severely criticized by the Liberal press, was unquestioned in Parliament."

In 1852 Lord Derby took office with a minority. The new Ministers were defeated in the House by 234 to 146, and dissolved on July 1st, 1852. They were beaten at the elections; but summoned Parliament, and did not resign until defeated—305 to 286—on the Budget.

In 1859 Lord Derby dissolved on April 19th, and Ministers were defeated at the polls by 350 to 302, but they met Parliament on May 31st and did not resign until defeated by a majority of 13.

In 1892, Lord Salisbury dissolved, but the Opposition previously voted the Estimates for the year and expedited public business. He was defeated by a majority of 40; but he did not resign until he was defeated by a direct vote of want of confidence, 350 to 310.

I think it well also to call Your Excellency's attention to the case which arose in New Zealand in 1891, as set forth in an Official Return of the Imperial House of Commons. Referring to the recommendations of six members for the Legislative Council of the defeated Ministry, to which he had given his sanction, Lord Onslow, the Governor of that Colony, in a letter to Lord Knutsford, says:—

"It has, however, long been the practice in England for Ministers even after a vote of censure has been passed on them in Parliament, to advise the Crown to create a limited number of peerages, not only for the purpose of strengthening the Upper House, but admittedly as rewards to those who, being qualified for the position of Peers, have rendered political services to the defeated party."

Lord Knutsford, in replying to that despatch, says :—

"With regard to the appointments to the Legislative Council recommended by the late Government, I am of opinion that in accepting the advice tendered to you by Your Lordship's responsible Ministers under the circumstances described in your despatches, you acted strictly in accordance with the constitution of the Colony, but I do not desire to be understood to offer any opinion upon the action of your Ministers in tendering that advice."

No question, therefore, can possibly arise as to the British constitutional practice in regard to the right of a defeated Ministry to carry on the public business until their successors are appointed, and to fill any vacancies that may exist. Lord Salisbury was not precluded from the creation of additional Peers, although the disparity between the Liberals and the Conservatives in the House of Lords was at least as great as that which exists in the Senate here. But to put the question beyond controversy, I have only to call Your Excellency's attention to the fact that the Honourable Mr. Mackenzie, after his defeat in 1878 by a majority of between 80 and 90 in the House of Commons, secured the approval of Lord Dufferin, then Governor General of Canada, to 180 Minutes of Council, being all that were submitted to him without any exception, of which 82 were appointments to office, including a Deputy Minister, a Judge of the Supreme Court of Canada, four puisné Judges and a County Court Judge.

In reference to Your Excellency's statement respecting the Canadian Judiciary, I am glad to be able to say, that in Canada as in England our Judges are neither Liberal nor Conservative; nor can they in any sense be said to represent political opinion on the Bench. I do not know upon what sources of information Your Excellency may have relied, but in this case, at all events, you will find them exceedingly untrustworthy. In the sense of referring to the political party to which the Judge belonged at the time of his appointment, I may call Your Excellency's attention to the fact that the Chief Justice of the Supreme Court, Sir Henry Strong, and the present Mr. Justice Taschereau, were appointed by Mr. Mackenzie, and that in Ontario the present Chief Justice Armour, Mr. Justice Maclellan, Mr. Justice Burton, Mr. Justice McMahon, and County Court Judges Jones, Ross, Price, Bell, Senkler, Wilkison, Burnham, Pringle and Dean; in the Province of Quebec, Mr. Justice Taschereau, Mr. Justice Jetté, Mr. Justice Bourgeois, Mr. Justice Caron, Mr. Justice Belanger, and Mr. Justice Plamondon; in Nova Scotia, Mr. Justice Weatherbe and County Court Judges Johnstone, DesBrisay, Morse and McIsaac; in Manitoba, Chief Justice Taylor and Mr. Justice Killam; in New Brunswick, County Court Judge Steadman, and in Prince Edward Island, County Court Judge Alley—all belonged to the Liberal party when appointed to the Bench.

In relation to the recommendation for the Senate, I may say that Your Excellency is aware that Messrs. Angers and Desjardins resigned their seats in the Upper House in order to place their services at the disposal of the Crown, and have thus an undoubted claim to special consideration.

I may also be permitted to draw Your Excellency's attention to the fact that during the five years Mr. Mackenzie was Premier he met with no lack of support from the Senate except on two occasions. On those occasions he failed to obtain the assistance of some of his most prominent supporters in the House of Commons, and subsequently I myself heard him frankly admit that in those two instances the Senate was right and he was wrong. The retention of the confidence of the country by the Senate, in my judgment, will depend much more upon the character and attainments of the gentlemen who are appointed to it, than upon their political convictions at the time of their appointment.

I may venture to remind Your Excellency that the exigencies of the public service and the difficulties to which you have alluded have been caused by the obstruction of public business by the Opposition, notwithstanding that the Government, of which I was the leader in the House of Commons, had the support of a large majority of that House. At that time the unfortunate circumstance to which I have referred, enabled comparatively few persons to prevent any legislation or public business being done by the House. Had the Opposition in Canada adopted the course followed in the Imperial Parliament in 1892, when the Opposition voted the estimates for the year and expedited public

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July 9th, 1896

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business; no such difficulty could have presented itself, and I fail to see why such obstruction on the part of an Opposition should entitle them to the special consideration of the Crown.

With reference to the inquiries which Your Excellency has from time to time thought fit to address to the Clerk of the Privy Council, I can only re-state my impression that such information in times past has been sought and obtained by the Governor General through communications with the Prime Minister or the Minister directly concerned, rather than by means of official memoranda which become part of the Records of Council.

In conclusion, I may be permitted to say to Your Excellency that under the British constitutional system which Canada has the happiness to enjoy, the Queen's representative, like Her Majesty, is the executive head of the country, removed from the arena of public controversy, however fierce the conflict of parties may be; and in my judgment no more fatal mistake could be made than any interposition in the management of public affairs which would cause the Governor General to be identified with either one party or the other.

Adhering respectfully but firmly to the opinions I have ventured to express in this memorandum, which I regret to find do not agree with those of Your Excellency, it remains only for me to tender the resignation of my colleagues and myself, and to ask that we may be relieved from our responsibilities as Ministers of the Crown at the earliest convenience of Your Excellency.

(Signed) CHARLES TUPPER.

Privy Council Chamber,
Ottawa, 6th July, 1896.

MEMORANDUM in further reference to the Governor General's Memorandum of July 4th and Sir Charles Tupper's Memorandum of July 6th.

My action at the present time has been guided solely by a regard for the following facts, namely, that—

- (1.) Parliament expired on April 25th.
- (2.) The result of the General Elections on June 23rd was the defeat of the Government.
- (3.) The supplies for the public service came to an end on July 30th, and by the view that, pending the assembly of Parliament, the full powers and authority, unquestionably possessed by the Government, should be exercised in such directions only as are demanded by the exigencies of the public interest, and so as to avoid all acts which may tend to embarrass the succeeding Administration.

(Signed) ABERDEEN.

July 9th, 1896.

To the Honourable the Privy Council:

In reference to Minute No. 2098, now before His Excellency, and of which His Excellency in the meantime withholds his approval, the undersigned desires to be acquainted, for the information of His Excellency, with the reasons which induce the Committee to propose that the provisions referred to, which were not intended to be waived prior to the examination in question, should now be waived after the candidates have undergone their examination and the results thereof have been obtained.

The undersigned would further ask to be informed whether the course suggested is in accordance with the statutes and regulations.

By command,

(Signed) JOHN SINCLAIR,
Governor General's Secretary.

The Citadel, Quebec, 10th June, 1896.

To the Honourable The Privy Council :

Memorandum with reference to the Treasury Board Reports numbered 2611, 2612, 2613, 2614, 2640 and 2653, which are returned herewith subject to this memorandum and signed by the Governor General, having been submitted to him on the 6th and 7th instant.

The undersigned is directed by the Governor General to request that pending their further consideration by Council His Excellency's approval be withheld from all recommendations which involve—

- (1) The creation of new offices or appointments ;
- (2) The filling of vacancies for which no provision has been made by Parliament and which have existed for more than one clear fiscal year ;
- (3) Superannuations, (and the consequential appointments) for which application has not been received.

By command,

(Signed) JOHN SINCLAIR,
Governor General's Secretary.

July 8th, 1896.

453 submissions to His Excellency the Governor General between the 23rd June and 8th July, 1896, and approved.

To the Honourable The Privy Council :

The following Minutes of Council which have not yet received the signature of the Governor General are herewith returned to you.

Numbers, 1329, 1425, 2098, 2304, 2305, 2411, 2412, 2450, 2451, 2452, 2453, 2473, 2616, 2617, 2619, 2088, 2398.

By command,

(Signed) JOHN SINCLAIR,
Governor General's Secretary.

July 11th, 1896.

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- 1329.—Renewing contract with N. Robertson for \$5,600, the highest estimate, for a further period of five years without tender, for the maintenance of Parliament grounds, &c., although former contracts were annually let.
- 1425.—Appointment of Captain V. B. Rivers to be Assistant Superintendent of Cart-ridge Factory at Quebec, (vacancy existing two years).
- 2098.—Waiving marks in Promotion Examination of J. L. Payne and Leon Gerin, after their having failed in such examination.
- 2304.—Setting aside Promotion Examination after Mr. Payne having failed in such examination.
- 2305.—Appointment J. L. Payne, Assistant Clerk Privy Council.
- 2411.—Appointment John T. Mellish, Revising Officer, West Queen's, P.E.I.
- 2412.—Appointment Charles R. Smallwood, Revising Officer, East Queen's, P.E.I.
- 2450.—Appointment Hon. A. R. Angers, Senator for Quebec.
- 2451.—Appointment George Gooderham, Senator for Ontario.
- 2452.—Appointment Hon. A. Desjardins, Senator for Quebec.
- 2453.—Appointment N. W. White, Senator for Nova Scotia.
- 2473.—Appointment James E. Wyatt, Revising Officer, West Prince, P.E.I.
- 2616.—Appointment Judge Doherty, Revising Officer, Ste. Anne's, Montreal.
- 2617.—Appointment C. E. Gagnon, Revising Officer, St. Hyacinthe.
- 2619.—Appointment G. P. Chateauvert, Revising Officer, Quebec.
- 2088.—Appointment F. G. Fauquier, to be Deputy Collector of Inland Revenue, Nakusp, B.C., (a new appointment).
- 2398.—Appointment J. B. Walkem, Deputy Registrar, Toronto, Admiralty District, (a new appointment).

NOTE—*In reference to the Memorandum addressed by order of His Excellency the Governor General to the Honourable The Privy Council, and dated July 8th, 1896.*

The Memorandum, with the Governor General's signature of the six Treasury Board Reports to which it refers, is dated July 8th, as being the date upon which His Excellency intimated its contents to Sir Charles Tupper. These papers were placed with the Clerk of the Privy Council on July 11th.

By command,

(Signed) JOHN SINCLAIR,
Governor General's Secretary.

GOVERNMENT HOUSE, OTTAWA, July 11, 1896.

OTTAWA, July 13th, 1896.

DEAR LORD ABERDEEN,

On my return from Toronto yesterday I had the honour of receiving Your Excellency's note of the 11th inst., enclosing a memorandum, dated July 9th, in further reference to my memorandum of July 6th.

Yours faithfully,

(Signed) CHARLES TUPPER.