EX PARTE STEEPLES RE THE PUBLIC SERVICE COMMISSIONER AND THE PROMOTIONS APPEAL COMMITTEE.

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J U D G M E N T.

Delivered at 2 pm on 25th November 1952.

This is an application to make absolute a rule nisi for a writ of prohibition directed to the respondents to restrain them from proceeding with the appeal lodged against the position of the applicant in the European Constabulary of the Territory of New Guinea upon the following grounds:-

"(a) I am a commissioned officer of the European Constabulary of the Police Force of the Territory of New Guinea set up under the provisions of the Police Force Ordinance 1930-1940 of the said Territory.

(b) Section 20 of the aforesaid Ordinance provides that members of the European Constabulary shall not be subject to the Public Service Ordinance 1922-1929 of the Territory or the regulations thereunder.

(c) The Promotions Appeal Committee hereinbefore referred to is set up under Section 28(7) of the Public Service Ordinance, 1949. Its functions are to consider appeals in regard to the filling of vacancies under Section 26 of the said Ordinance. Section 28 of the said Ordinance provides "for the consideration of certain matters in the selection of an officer for promotion." "Officer" is defined in Section 4 of the said Ordinance as "Officer in the Public Service....."

(d) As a member of the European Constabulary of the Territory of New Guinea I am not subject to the provisions of the Public Service Ordinance of the said Territory and the said Promotions Appeal Committee has no jurisdiction to hear an appeal concerning my position in the European Constabulary."

Counsel for the respondents raised as a preliminary objection the question as to whether this is or is not a case in which prohibition can issue as the whole proceedings are

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unfounded. It seems desirable to deal with this question and dispose of it first.

Under Part II of the Public Service Ordinance 1949 (No. 5 of 1949) by section 7 (1) the Governor General may appoint a person to be the Public Service Commissioner. His duties are set out in Section 10.

Part III of the Ordinance deals with the establishment of the Public Service and appointments, and in section 28 there are further powers and duties given to the Commissioner. By sub-section (7) power to constitute a Promotions Appeal Committee is given for the purpose of section 28. The Members of the Promotions Appeal Committee hold office upon such terms and conditions as are prescribed.

When an officer is promoted, and another officer desires to appeal against such promotion he shall lodge his appeal with the Commissioner who in turn shall forward it to the Promotions Appeal Committee with certain particulars. The Promotions Appeal Committee shall then make enquiries into the claims of the appellant and those of the officer provisionally promoted, and shall (a) where the prescribed maximum salary of the office to which promotion is to be made does not exceed such maximum rate as is prescribed for the purposes of this subsection - determine the appeal, or

(b) where the prescribed maximum salary of the office to which promotion is to be made exceeds such maximum rate as is prescribed for the purpose of this subsection - make a report to the Commissioner.

The Promotions Appeal Committee, then, has a dual function; in the one case to determine the appeal without more, and in the other to make a report to the Commissioner. It is the exercise of the latter function which it is sought to restrain in these proceedings.

Upon the receipt of the report by the Commissioner he

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must forward it together with his own recommendation as to how the appeal should be determined, to the Secretary of the Commonwealth Department of External Territories who shall determine the appeal. After the report has been made by the Promotions Appeal Committee to the Commissioner it has nothing further to do, but the Commissioner has, even after the receipt of the determination of the Secretary, for it rests upon the Commissioner to implement the determination either by promoting the appellant officer or by confirming the provisional appointment of the officer whose appointment has been appealed against.

The Committee as a committee would appear to be functus officio upon the conclusion of its duty either in determining an appeal or making a report in any given case because of its constitution under the provisions of Regulation 23 of the Public Service Regulations (No. 13 of 1950).

The question is, assuming that the applicant's position is being threatened by the proposed action of the Commissioner and the Promotions Appeal Committee he has a remedy against them by way of a writ of prohibition, because by their action the respondents are exceeding their jurisdiction.

There is no doubt on the authorities that prohibition to restrain action in excess of jurisdiction will go not only to courts legally constituted as such, but also to persons whether courts or not, who have been vested with legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority. R -v- Electricity Commissioners 1924 1 K.B. at p. 204-205.

The respondents contend that it must be shown in law that the Committee or the Commissioner can affect the rights of the applicant and they have a duty to act judicially. That is so on the authority of R -v- Electricity Commissioners and Counsel for

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respondents quoted in re Clifford and O'Sullivan 1921-2A.C. in support of his contention as being a case where the position was similar to the one under review. It was stressed that in all the authorities including the Electricity Commissioners case the body charged with the legal duty had the right and did, in fact, make an order.

Here, the Commissioner and the Promotions Appeal Committee derive their powers from, and their duties are imposed by, an Ordinance of the Territory. They are legally constituted to deal with promotions and appeals relating thereto. The Promotions Appeal Committee in the case where it does not determine must come to some conclusion; it must by virtue of its establishment and for the purposes of it, make a decision. I cannot conceive of its value if its function is merely to collect evidence or material which it forwards to the Commissioner. This body acts judicially in hearing both sides and in coming to a conclusion though it is not to be final as to whether A, the promoted, or B, the one whose position is affected by the subsequent decision of the Secretary for External Territories, is given the position. It is the advice upon the conclusion the Committee has come to which sets in motion the matter which in the final determination might seriously affect the rights of the individual concerned. The Commissioner in his right to recommend is also a party to the ultimate and possible interference with the right of the individual. Both the Commission and the Committee are acting in a quasi judicial capacity at least.

It is true that the final determination is made by the Secretary for External Territories. The Secretary however, can not make a determination without the report of the Committee and the recommendation of the Commissioner. The Committee is given the power under the Ordinance to make full enquiries into the claims of the appellant and those of the officer provisionally appointed and shall make a report thereon. The Commissioner

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upon receipt of the report is to forward the report together with his own recommendation as to how the appeal should be determined. I do not see that the acts of either the Committee or the Commissioner are ministerial and not judicial. Under sub-paragraph (a) of subsection 16 of section 28 it could not be doubted, I think, that the Committee is acting judicially for it determines the question, and I am unable to see that it is not acting judicially under paragraph (b) because instead of determining the matter it must report its opinion for the consideration of the Secretary for External Territories. It is the same body set up by statute.

When a body is given such power by legislation that the exercise of its power can be dangerous to the rights of some person it seems to me that there is a right in the person affected to have it restrained, even though the results of the exercise of its power are to be the subject of ~~arbitration~~ decision by another authority.

It is contended that the Promotions Appeal Committee and the Commissioner merely advise and they come to no decision. I do not think that can be so, for I have already said that the very nature of the Promotions Appeal Committee and its functions postulates some finding, to be made the subject of comment and report by the Commissioner to the Secretary of External Territories. As I see it there are three functionaries which in combination ensure a decision. The Committee and the Commission do not merely collect material upon which ultimately the Secretary acts ministerially. The Secretary surely is to act judicially in any given case.

It seems to me in the case of Church -v- Inclosure Commissioners 11 C.B. (N.S.) 664 the position was similar to that of the matter which is being reviewed here. I take this quotation from the judgment of Lord Justice Banks in the Electricity Commissioners case at page 196:-

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"The case of Church -v- Inclosure Commissioners (1) is the one which requires the closest consideration of any of the cases cited during the argument. It was a case in which the Court granted a writ of prohibition directed to the Inclosure Commissioners prohibiting them from reporting the proposed inclosure of a certain common for the sanction of Parliament, or from taking any further steps towards the inclosure of the said common without first obtaining the consent of the complainant. In order to realise the importance of the decision it is necessary to call attention to the material provisions of the Inclosure Act of 1845 in reference to the procedure to be followed. It appears from the provisions of s.27 that some lands might be inclosed by order of the Commissioners without the previous consent of Parliament, and some might not. The common in question in this case was one that could not be inclosed without the previous direction of Parliament. The course to be followed to secure inclosure in this case therefore was first the report of the Assistant Commissioner to the Commissioners, followed by their report to Parliament, in which they certify their opinion as to the expediency of the proposed inclosure, which report Parliament might or might not adopt, or which Parliament could alter or vary, and which as adopted is included in an Act of Parliament. The objection on which the application to the Court was made was that the Assistant Commissioner refused to consider a claim which was properly brought to his attention. Objection was made to the Court making the rule absolute on very much the same grounds as are advanced by the Attorney-General in the present case. It was argued that the matter was not the subject of prohibition, as the question was left by the statute to the Commissioners, who if satisfied then made a provisional order which after hearing objections they reported to Parliament,

who might or might not act upon it."

In re Clifford and O'Sullivan 1921 2 A.C. it was held that prohibition did not lie, first, because the officers constituting the military court did not claim to act as a judicial tribunal in any legal sense, and, secondly, they were functi-officio. As to the second ground the Tribunal here is not functi officio because it is constituted and ready to hear the appeal. As to the first, the question depends on whether or not the Tribunal is acting ministerially or judicially. In that case the Tribunal had no legal authority, but was merely a body of military officers sitting as a military court. It did not purport to act under any commission from His Majesty to try prisoners or under any statutory or common law authority or as a court martial." It was in no sense a Court. I think that case is distinguished from the application under review because there is here a statutory body set up with legal powers. It is true that in this instance its function is merely to report its opinion, but that was the only requirement in Church v. Inclosure Commissioners and that case was applied with confidence in the Electricity Commissioners case.

The Court of Appeal in the Electricity case was not influenced by the fact that the Electricity Commissioners were to make a report and no more and it followed Church v. Inclosure Commissioners where prohibition went in similar circumstances. It seemed to be that the requirement was that the Court had to be satisfied that the commissioners were proceeding judicially in making their report. In coming to a conclusion on this point it is necessary to deal with the case on its own particular circumstances.

In argument I was referred to R. v. Macfarlane 32 C.L.R. 518 as an authority for the proposition that the Tribunal here was merely advisory and the Minister's act was an executive act upon the advice given. I think the case of R. v. Macfarlane was dealt with very well by Jordan C.J. in Ex parte Wilson; re Cuff

and Others No. (2) 1940 Vol. 40 State Reports (N.S.W.) p.559 - p.568.

Unfortunately, that case upon appeal to the High Court was decided upon a question of interpretation and it was not found necessary to decide whether or not prohibition would lie. It is, however, sound reasoning supported by the other two learned Judges of the Full Court.

Upon a review of the sections under Part IV of the Public Service Ordinance 1949 (No. 5 of 1949) I am unable to see that the Commissioner and the Promotions Appeal Committee are to perform merely executive acts and that when there is an appeal which goes to the Secretary the latter is to act otherwise than judicially. I do not see furthermore, that a person affected or likely to be affected cannot make application for prohibition in the initial stages, that is, as soon as a step is taken to interfere with his rights. In my view prohibition can lie against the respondents.

I come now to consider the question as to whether or not the Commissioner and the Promotions Appeal Committee have jurisdiction to interfere in any way with the applicant in his position in the Police Force of New Guinea.

The Police Force of the Territory of New Guinea, the Mandated Territory as it was before its status was altered by the Papua and New Guinea Act 1949 and it became a Trust Territory, was constituted and directed under the Police Force Ordinance 1930-1940 of the Territory of New Guinea. That appears as a self-contained Ordinance, and while the Superintendent of Police appointed by the Governor-General as head of the Force, was made by sec. 7 subsec. (2) of the Police Force Ordinance subject to the Public Service Ordinance 1922-1940, the members of the European constabulary were by section 20 of the Police Force Ordinance expressly declared to be not subject to the Public Service Ordinance, except for certain purposes such as leave of

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absence, set out in sections 21 and 22. There was, too, an Auxiliary European Constabulary which included District Officers who, while holding their office, were deemed to be commissioned officers of the Auxiliary European Constabulary. This Auxiliary Force was subject to the Public Service Ordinance and received the pay and allowances under that Ordinance.

The Commissioned Officers and Warrant Officers were appointed to the European Constabulary by the Administrator, and prior to the war, in addition to certain warrant officers, three Inspectors of Police, of which the applicant was one, had been appointed to Rabaul, Lae, and Wau respectively. The applicant was firstly a Warrant Officer, but was promoted to commissioned rank about the month of January, 1941, as an Inspector of Police in charge of the Rabaul Police District. Upon the invasion of the Territory of New Guinea, by the Japanese in 1942 the applicant went to Australia and joined the Australian Armed Forces.

The Administration of the Territory of Papua and that of the Territory of New Guinea ceased to function in February 1942 owing to the Japanese invasion, and National Security (External Territories) Regulations (Statutory Rules 1942 No. 200 Gazetted on 27th April, 1942), placed the administration and control of the two Territories in the hands of the Minister of State for External Territories. Under Section 21 in Part III of these Regulations the exercise of all or any of the powers and functions vested by or under any law in force on the 11th day of February 1942, in the Territory of Papua or the Territory of New Guinea in the Administrator or any authority (other than a Court), was taken away and vested in the Minister. The laws of both Territories though rendered inoperative for the most part in the circumstances were not abrogated or suspended.

In 1945 when Civil Administration was about to be resumed under the Papua-New Guinea Provisional Administration Act 1945,

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and in anticipation of the passing of this Act, the applicant was informed by a letter signed by the Secretary, Department of External Territories dated 16th August, 1945 (Annexure "A" to the applicant's affidavit sworn on seventh October, 1952, and filed in this application) that he had been assigned to the position of Inspector of Police with a named salary. This was a roneoed letter which was addressed to all former officers in the Public Service of Papua and the Public Service of the Territory of New Guinea, and it purported to make the appointments to the Public Service of the Provisional Administration of the Territory of Papua-New Guinea.

The name of the applicant later appeared in the list (annexure "A" to the affidavit filed by the respondents in this application) of appointments to the provisional Public Service of the Territory of Papua-New Guinea dated 16th October, 1945, and signed by the Secretary of the Department of External Territories. The Papua-New Guinea Provisional Administration Act did not come into force until 30th October, 1945. How he could be appointed to service in the Provisional Administration before the Act constituting it came into existence, is difficult to see, but it is supposed that it was considered that the controlling power given to the Minister under the National Security Regulations which were still in operation was sufficient authority. I am unable to find any validation of the appointments in the list referred to. In any event the applicant assumed duty in the Provisional Administration and together with the rest of the names contained in that list is presumed to have been appointed to the service in the Provisional Administration.

Upon the establishment of the Provisional Administration the former services of Papua and The Mandated Territory of New Guinea became one for administration purposes, and there was no operative Public Service Ordinance governing both, and there was none during the provisional period. When the Papua-New Guinea Provisional Administration Act became law appointments were made by virtue of section 15 of that act to the provisional Public

Service.

There were in operation at the date of the letter referred to, and still are, two Ordinances, one for each Territory, establishing police forces for the Territories. These were for Papua the Royal Papuan Constabulary Ordinance 1939-1940, and for New Guinea, the Police Force Ordinance 1930-1940. It is to be remembered that it was to be, and it became, a composite administration of the two Territories under the Papua-New Guinea Provisional Administration Act 1945.

The office to which the applicant was appointed, or assigned as it is put, and what he accepted at that time was "Inspector of Police" with a named salary. He was not, therefore, appointed as an Inspector of Police either under the Royal Papuan Constabulary Ordinance or the New Guinea Police Force Ordinance. It was however, an appointment to take effect under the provisional Administration shortly afterwards to be established; and he entered the service of the provisional Administration.

The Officers of the Royal Papuan Constabulary were subject to the Public Service Ordinance of Papua. The few European Officers who were in the police force prior to the war were classified under the Public Service Regulations. The pay and allowances (if any) and the periods of service of the Force were to be fixed by Regulations, but no Regulations were ever made under section 5 of the Royal Papuan Constabulary Ordinance 1939-1940.

By section 5 of the Papua-New Guinea Provisional Administration Act 1945, the operation of sections six to thirty-four of the New Guinea Act 1920-1935 and the operation of sections ten to fifteen, sections seventeen and eighteen, twenty-two to forth-three, sections fortysix, forty-seven and section fifty were suspended, but nothing was to affect the operation of any laws under any of those sections. The Administrator in the

Provisional Administration from time to time appointed police officers either under the Royal Papuan Constabulary Ordinance, Section 8, or under the New Guinea Police Force Ordinance, Section 10.

There was this curious position then that in this joint police force for administrative purposes those who happened to be appointed under section 10 of the New Guinea Police Force Ordinance were not subject to the Public Service Ordinance of New Guinea, and those who happened to be appointed by virtue of section 8 of the Royal Constabulary Ordinance of Papua were subject to the Public Service Ordinance of Papua, so that salary rates and promotions could not be governed by the Public Service Ordinance of the one, but could be under the other, provided these Ordinances were in operation.

Sometimes the commissioned officers appointed under Section 10 of the New Guinea Police Force Ordinance were serving in Papua, and sometimes in New Guinea and the same with respect to those appointed under section 8 of the Royal Constabulary Ordinance. The applicant himself served at Port Moresby in Papua and at Lae and Rabaul in New Guinea. To my mind during the Provisional Administration the Public Service Ordinances and Regulations for both Territories were for essential purposes dormant because of the fusion and all appointments were provisional. During the Provisional Administration the applicant was deriving whatever benefits he received, not from the New Guinea Police Force Ordinance, but from the provisional organization set up for the Public Service generally. All other police officers were in the same boat.

The Provisional Administration came to an end at 30th June, 1949, when the Papua and New Guinea Act, 1949 came into force on 1st July, 1949 and Section 3 repealed the Papua-New Guinea Provisional Administration Act 1945. Section 30 of the Papua and New Guinea Act 1949 created a Public Service for the

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Territory and by section 31 it was declared that Ordinances relating to the Public Service could make provision in respect of persons who had been former officers appointed under any Act repealed by Section 3 of the Papua and New Guinea Administration Act. Notwithstanding the repeal of the Acts repealed by Section 3, the laws made under them, which includes Ordinances, were continued in force in relation to the Territory to which they belonged.

The Public Service Ordinance 1949 was gazetted on 23rd June, 1949, that is before the Papua and New Guinea Act, 1949 the constitution which gave power to ordain the Public Service Ordinance. It became necessary to cure this so the Public Service Adaptation Ordinance 1949 was passed and gazetted on 21st July, 1949. This latter Ordinance effected certain amendments also, to the Public Service Ordinance 1949. Section 14 was amended by omitting Sub-section (1) thus leaving as the new sub-section (1) the old sub-section (2) reading as follows:-

"The Public Service shall consist of three Divisions namely -

The First Division

The Second Division

and

The Third Division."

It was not until 9th November, 1950 that the Public Service Regulations made under the Ordinance were gazetted. Following the promulgation of the Regulations action was taken to place the officers of the Public Service in the various Divisions. The members of the Police Force for both Territories were placed in the 2nd Division.

By the Public Service Ordinances Repeal Ordinance 1950 (No. 40 of 1950) all the Public Service Ordinances in force in both Territories were repealed leaving the Public Service Ordinance 1949 the governing Ordinance for the combined

Territories.

Section 20 of the Police Force Ordinance 1930-1940 of New Guinea declares that members of the European Constabulary shall not be subject to the Public Service Ordinance 1922-1929 of the Territory or the regulations thereunder. I am invited to hold that because the Public Service Ordinance 1922-1929 is now repealed there is an implied repeal of Section 20 of the Police Force Ordinance, for Section 20 has become naked in its rendering and what is left is "members of the European Constabulary shall not be subject to", which is meaningless.

I think, however, that this section is saved by section 47 of the Ordinance Interpretation Ordinance 1949 (No. 1 of 1949) which reads as follows:- "Where in an Ordinance reference is made to another Ordinance and that other Ordinance is subsequently amended or an Ordinance is made in substitution therefor then, unless the contrary intention appears the reference shall, from the date of the amendment or substitution, be deemed to be to the amended or substituted Ordinance". The reference then in Section 20 of the Police Force Ordinance is to the Public Service Ordinance 1949 unless the contrary intention appears. The Public Service Ordinance 1949 is, however, significant in relation to intention. Firstly, there is the definition of a "Police Force of the Territory" in section 4 which "means either the Royal Papuan Constabulary of the Territory of Papua or the New Guinea Police Force of the Territory of New Guinea". Secondly, there is section 19 sub-section (4):- "The Minister may dispense with the period of probation - (a) in the case of appointments to the Public Service of:-

(i) Officers from the Public Service of the Commonwealth, a State or a Territory of or under the authority of the Commonwealth.

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(ii) Members of a Police Force of the Territory, and

(iii) Exempt Officers, and

(iv) Persons appointed under Section 15 of the Papua-New Guinea Provisional Administration Act 1945-1946 whose appointments have been confirmed.

Thirdly, there is section 20, sub-section (2) which reads:- "(2) In the case of the appointment to the Public Service of

(a) An officer from the Public Service of the Commonwealth, a State, a Territory under the authority of the Commonwealth, or an officer of an instrumentality of the Commonwealth which is subject to the provisions of the Superannuation Act 1922-1948.

(b) A member of a Police Force of the Territory

(c) An exempt officer, or

(d) A person temporarily or casually employed in the service,

the appointment may be at such salary within the limits of salary prescribed for the office to which the appointment is made, as is fixed by the Minister."

Fourthly, there is section 22 which is as follows:-

"22(1) Subject to this Ordinance where a member of a Police Force of the Territory is appointed to be an officer of the Public Service his service in that Police Force shall if continuous with his service in the Public Service be deemed to be service in the Public Service.

(2) A member of a Police Force of the Territory who is appointed to the Public Service shall have such seniority as is determined by the Commissioner."

These sections show that a Police Force of the Territory is contemplated as being outside the Public Service Ordinance.

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The contrary intention, to my mind, does not appear so as to remove the force of section 47 of the Ordinances Interpretation Ordinance, and the result is that officers appointed to the Police Force of New Guinea only are not subject to the Public Service Ordinance 1949.

It may be that when the Public Service Commissioner placed the officers of the Police Force of New Guinea appointed under section 10 of the Police Force Ordinance in the 2nd Division of the Public Service he was acting beyond his powers, if there was nothing more to it than that. But the Commissioner was making provision for positions and salaries for a combined Force, for as far as I can see commissioned officers have been appointed both to the Royal Papuan Constabulary and the New Guinea Police Force and for administration purposes performing duties in the Territory of Papua and New Guinea as a whole. At no time could it be said that an officer was in the New Guinea Police Force any more than in the Royal Papuan Constabulary. As I have pointed out the Royal Papuan Constabulary was not exempt from the Public Service Ordinance of Papua.

It is to be considered now whether the applicant was in fact appointed to the Police Force of New Guinea under the authority of the Papua and New Guinea Act 1949. It is a fact that the applicant was appointed to the New Guinea Police Force prior to the war and continued in such Force until the evacuation in 1942. It is true that he was an Inspector of Police in the Provisional Administration and under the Public Service of that Administration. But his only appointment in the Papua and New Guinea Administration was his classification in the Public Service when he was placed in the 2nd Division in the Regulations made under the Public Service Ordinance 1949.

It was not provided that a person who was in the New Guinea Police Force prior to the war would upon his taking service in the Provisional Administration be automatically returned to the New

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Guinea Police. Inf act, he was appointed to the Public Service of the Provisional Administration. Probably it would have been proper to appoint him under Section 10 of the Police Force Ordinance as appointments both to the Royal Papuan Constabulary and the New Guinea Police Force were made in 1946 following the resumption of civil administration. He should have been appointed to one or the other of the Police Forces. What was he during the Provisional Administration? A member of the Papuan Force or a member of the New Guinea Force? He should have come under one or the other, but which, and I can see no evidence that he was re-appointed to the New Guinea Police Force either under the Provisional Administration or the present permanent Administration.

There is a list of 48 appointments of Commissioned Officers in pursuance of Section 10 of the Police Force Ordinance 1930-1940 of the Territory of New Guinea published in Gazette No 45 of 2nd August 1951 on page 295, but the applicant's name does not appear therein.

The applicant in his second affidavit filed in the application in paragraph (1)(e) thereof declares that he has never made and subscribed the oath required to be made and subscribed before appointment to the Public Service by section 18 of the Public Service Ordinance 1949, but he does say in paragraph 1(d) of the affidavit that he made and subscribed an oath under the Royal Papuan Constabulary Ordinance 1939-1940 of the Territory of Papua. What I suppose he is referring to is the Declaration on Enlistment set out in section 7 of that Ordinance.

It seems to me the applicant in making the declaration came under the Royal Papuan Constabulary Ordinance 1939-1940 during the provisional Administration. The Public Service Commissioner however, appears to accept it that the applicant is now a member of the New Guinea Police Force because

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In paragraph 6 of his affidavit filed in the application, the last sentence thereof reads as follows:-

> "The Police Officers in the Territory occupying the afore said classified positions are appointed to be Commissioned Officers of the New Guinea Police Force."

This classification was that notified in Gazette No.10 dated 14th February, 1951, the applicant was in that classification. The Commissioner may put it in his affidavit that the applicant is a Commissioned Officer in the New Guinea Police Force, but I see no evidence of it.

There has been no fixing of rates of salary or allowances for the New Guinea Police Force under the Police Force Ordinance since the permanent Administration began on 1st July, 1949 independent of the Public Services Ordinance 1949. The Police force was serving as a whole for the Territory of Papua New Guinea. The Force as a whole has accepted the postings, the positions, and the rates of salaries as under the Public Service Ordinance. The applicant himself has accepted the postings and rates of salary as determined under the Ordinance and personally opposed an appeal against his appointment as Superintendent Port Moresby earlier this year. On that occasion he accepted the jurisdiction of the Tribunal. What the applicant is seeking to prohibit are the proceedings on appeal lodged against his position in the European Constabulary of New Guinea Police Force. His position at present in the Police Force of the Territory was derived not by virtue of the Police Force Ordinance. Indeed he has not given a position with appropriate salary under the Police Force Ordinance. What he has now is what this Tribunal plus the Commissioner was instrumental in giving him. All it is doing is seeking to rule upon a position which it has itself created, either in the applicant's favour or otherwise.

I do not think that this is a matter in which prohibition lies and I discharge the rule nisi.