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Babu RAJANDHARI SINHA : But is it not due to the system in vogue ?

The Hon'ble Mr. SACHCHIDANANDA SINHA : The system, after all, is not much to blame—for we know that systems and human beings act and re-act upon each other. It may thus be partially due to the system, but it is equally due to the men who manipulate it. The best system, if worked by a man on a wrong principle, will come to nothing : whereas the worst system, if worked by the right sort of people, will come to something. Well, I promise on behalf of Government that we shall do all that we can, but at the same time I ask my hon'ble friends to exert their influence to see that corruption is reduced in civil courts by the action of the people themselves.

Mr. SRI NARAYAN SAHAY : I feel, Sir, I have attained my object to a considerable extent. In moving this motion my object was only to bring to the notice of the Government the difficulties under which these officers have to serve and which operate harshly on them, and also to indicate to Government that there is a desire amongst the non-official members that there should be some little improvement in the lot of these officers. I want to assure the Government that we would be quite prepared to vote an additional sum of money if that is necessary to provide some extra staff in order to give some relief to these officers. In view of the remarks by the Hon'ble Mr. Sinha that the matter is receiving consideration at the hands of Government and the Hon'ble High Court, I beg leave of the Council to withdraw this motion.

The motion was by leave withdrawn.

GENERAL REDUCTION.

Babu SHIVA SHANKAR JHA : Sir, I beg to move :
That the demand under this head be reduced by Rs. 100.

Sir, my object in moving this small cut is to draw the attention of the members of this Council, as well as of the Government, to the danger of the executive assuming the rôle of a judge sitting in judgment over the judgment of the judiciaries. It has been repeatedly stated in this Council and also outside this Council that the judicial pronouncements of the judiciary cannot form the subject-matter of criticism in this House, nor can they form the subject-matter of criticism by the executive Government.

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The executive Government have to carry on the administration of the Government for the time being. Now, it may be, Sir, that in certain cases the Crown itself happens to be one of the parties. If the executive assume the rôle of a critic, it might very well criticise every judgment that might be pronounced by the highest judiciary of the land. The danger is quite evident. The effect will be, if this were allowed, that it would prejudicially affect the judgment of the judiciary.

The Hon'ble Sir HUGH McPHERSON: Sir, is the hon'ble speaker referring to some imaginary incident, when he brings forward an accusation of this sort against the executive? Unless he substantiates his statement by reference to some definite incident.....

The Hon'ble the PRESIDENT: (To Babu Shiva Shankar Jha.) Is the hon'ble member sure of his facts?

Babu SHIVA SHANKAR JHA: If the Hon'ble Member for Government had the patience to hear me out, he would have seen that I refer to a particular incident of a recent date. Anyway, Sir, from the interruption that I have received from him, I am quite convinced that he realizes the position that I have stated, namely, that it is very undesirable that the executive should ever sit in judgment over the judiciary of the land.

The Hon'ble Sir HUGH McPHERSON: Government fully accept the position that it is undesirable that the executive should sit in judgment over the orders of judicial courts of any description. Government do accept this position.

Babu SHIVA SHANKAR JHA: Sir, I am very glad to have that assurance from the Hon'ble the Leader of the House. Sir, I am referring to a recent case. There was a case under section 145 of the Criminal Procedure Code pending in the court of the subdivisional officer of Hajipur in which the Collector of Muzaffarpur was the first party and Babu Gauri Shankar the second party.

The Hon'ble the PRESIDENT: I should warn the hon'ble member that he is making all these statements on his own responsibility and I again wish to emphasize the responsibility of an hon'ble member of this House who although exempt from civil and criminal liability for the speeches made here, is certainly responsible to the Council.

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Babu SHIVA SHANKAR JHA : Sir, I am speaking this with the full sense of responsibility which attaches to a member of this Council and I certainly speak with all the emphasis at my command.

Now, Sir, while the case was pending the second party moved the Hon'ble High Court at Patna for a stay of the proceedings and for transfer of the case. A rule was issued and the motion was admitted, and the second party went with a letter from his Vakil here and filed a petition along with that letter before the subdivisional officer of Hajipur informing him that he had moved the High Court for transfer of the case and the High Court had issued a rule. Without taking that into consideration and without attaching the least importance to it, the learned subdivisional officer passed judgment against the second party and simply filed the application. The second party came again to the High Court and after stating the full facts connected with the case, moved for setting aside the decision. The Hon'ble High Court was pleased to set aside that judgment and also passed certain strictures on the learned subdivisional officer. As it is the practice, Sir, that whenever there is any stricture passed on any judicial officer, a copy of that judgment is sent to the Government from the High Court, a copy of that judgment was also sent to the Government.

The Hon'ble Sir HUGH McPHERSON : Has the hon'ble member had access to the correspondence in question ?

Babu SHIVA SHANKAR JHA : I am not prepared to answer that.

Government, Sir, sent a note to the High Court in reply which was a sort of.....

The Hon'ble Sir HUGH McPHERSON : Has the hon'ble member seen the correspondence ?

Babu SHIVA SHANKAR JHA : I am not bound to answer that question again.

Mr. E. L. L. HAMMOND : Is the hon'ble member in order in discussing filched correspondence between the High Court and the local Government ?

The Hon'ble the PRESIDENT : I see no objection.

The Hon'ble Sir HUGH McPHERSON : Sir, can we not ask him for the basis of his information?

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Babu SHIVA SHANKAR JHA : I will not say that.

Babu JALESHVAR PRASHAD : Somehow or other, dirty business leaks out.

Rai Bahadur DWARKA NATH : Supposing a *bande Khuda* came.....

The Hon'ble the PRESIDENT : Order, order.

I have decided on a point of order that the hon'ble members are entitled to make a statement in Council on their own responsibility. Any other member of Government is entitled to ask the basis of his information, but I have no power to compel the hon'ble member to disclose that basis.

Rai Bahadur DWARKA NATH : We have got our own Criminal Investigation Departments.

Babu SHIVA SHANKAR JHA : My conscience is quite clear and I will not state anything which is incorrect, so far as I know.

Government was pleased to send a strong note to the High Court which sounded like a protest against the judgment of the Hon'ble High Court and also attempted to justify the conduct of the subdivisional officer who was the subject of strictures at the hands of the Hon'ble High Court. It is also said that they wanted some sort of explanation from the Hon'ble High Court on that point. The Hon'ble High Court, as would be expected, refused to enter into correspondence with the Government on that subject and protested against the interference of the executive. This is an instance in point which shows that the executive is now trying to interfere with the judiciary and by such notes to overawe the judiciary in the proper discharge of its duties. That is a thing which we protest against. It is well known that in this country these judicial courts are the greatest protectors of individual liberties. Sir, the members of this Council will not tolerate any overawing of the judiciary by the executive and will not tolerate that the executive should intermeddle with the judgments pronounced by them. The greatest thing that the people value under the British Government is British justice. That is the foundation of the British Government. If you shake justice you shake the foundation. It is therefore that I move this motion and commend it to the acceptance of this House.

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Babu LAKSHMIDHAR MAHANTI : Sir, in supporting this motion of small reduction, my object is to draw the attention of Government to the deplorable situation in the administration of justice as it is administered at Cuttack. It is simply this. When this province was formed, Government gave us an assurance that justice would be administered at our doors, and with that object the Circuit Court was established and the Hon'ble Judges of the High Court were required to go three or four times a year for the administration of justice at Cuttack. But in practice we see that the Hon'ble Judges sometimes go after one year and sometimes after six months with the result that cases are accumulated at Cuttack and during their short stay more attention is given to disposal of cases than to real administration of justice. Sir, if the disposal of cases at Cuttack and at Patna be compared, Government will be convinced that more cases are disposed of at Cuttack than at Patna. Then again, Sir, in the administration of criminal justice where questions of bails are concerned, parties have to come to Patna. Often only *ad interim* bails are allowed and poor parties and litigants have to come to Patna all the distance to move the High Court for the grant of bail. This could easily be avoided if the Judges would visit Cuttack oftener and the disposal of criminal cases would be speedier than it is done at present. I would draw the attention of Government to these facts and I support this motion with these facts.

[Interval for lunch.]

Mr. MADHUSUDAN DAS : Sir, some reference has been made to the sittings of the Circuit Court at Cuttack. The hon'ble member who occupies a seat to my right said that if a comparison be made between the number of cases decided by the High Court in Patna and in Cuttack, there will be a marked difference, and if the Judges were consulted they would say that they had worked much harder at Cuttack than at Patna. The Circuit Court had at first four sessions there ; that was cut down to three. I do not know the reason for it. The Hon'ble Judges at Patna find it difficult to spare time for Circuit Court duty at Cuttack.

The public have nothing to do with the reasons which have necessitated this attitude of the High Court. But this much is certain that Orissa suffered very much in the past so far as administration of justice is concerned on account of its being far away from the High Court at Calcutta and from the seat

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of Government at Calcutta. The administration of the country, I am not referring to the judicial administration only, the revenue administration and the administration of the other branches were carried on under circumstances which proved very prejudicial to the interests of the people of Orissa. There is no doubt of this. The history and everything concerning Orissa is very different from Bihar and Bengal. I shall only refer to a single instance, because I am sure that the Hon'ble the Leader of the House must have in his recollection the difficulties he himself had in regard to the working out of the Orissa Tenancy Bill. Small portions of the Bengal Tenancy Act had to be added by way of patch work to Act X of 1859, when following the principles of Sir John's stocking—knitting, repairing, knitting till all the threads were changed, so that one did not know the identity of the stocking. This question puzzled the German philosophers at one time. This patch work was carried till they found it impossible. Then they were driven to legislate separately and the result was the Orissa Tenancy Act.

The Orissa Tenancy Act is a new thing brought into existence under very peculiar circumstances and questions under the Orissa Tenancy Act often come up before the High Court because there are debatable questions which often arise—and arise where?—arise in the court of the deputy collectors because suits under Tenancy Act are decided not by munsifs but by deputy collectors. Questions of jurisdiction very often come up and naturally the people require, people expect, people can justly demand that adequate attention should be paid by His Majesty's Judges to a discussion of these questions and to a right interpretation of the legislative measure. But, Sir, you send out two Judges to the place limiting the time for their work—(I do not know whether there is any instruction or not)—but I remember somebody said to me in a dream once it is not the right thing to ask Judges to finish the cases, within fifteen days, to finish all cases within a limited time. I remember one of His Majesty's Judges once said that we come to administer law, not to decide cases. Orissa requires that the questions of law which come up should receive adequate attention because there are no precedents. Very often fresh questions of a new kind without precedents have to be discussed. The judgments passed in these cases become part of the law. You will see how necessary it is that in a country or rather in a tract of a

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province where these questions arise, how necessary it is that the Judges should go there to administer the law and not to dispose of the number of cases pending. This can only be done by leaving the Judges free without prescribing how many cases they must decide. I owe it to my own conscience, to my very existence under the British rule to point out to those who are now in authority as well as to those who form the majority of the population whereof I am an humble member that if the administration of justice, if the fountain of justice is tainted in any way, India would be in a most dangerous and perilous position even if she were guarded by a thousand bulwarks. It is justice that we want—justice has not been defined anywhere—no one can define justice, yet everybody demands justice—there is a cry for justice everywhere and yet we do not know whether justice has been done in a particular case or not; I have never come across a definition of justice except an attempt at it made recently in a book published about three years ago by an eminent Italian jurist and that too has been criticised by American writers. It is no use asking the Judges to decide so many cases. I do not understand what right the executive Government has to prescribe a time-limit for each case. The best way to look at the question is to look at it in the following way. A suitor comes and pays you so much in court-fees and says—"Here I pay you whatever you demand as the price of justice. Here is the money, let me have justice." Government professes to give justice, but if you look at the budget provision you will find that a very large portion of the income from court-fees is spent in other ways—in maintaining a vigorous police and in other things. Sir, if these things were laid before a tribunal which did not know anything of this policy of the British Government, if it were possible for some angels to come down on earth and to see this, their verdict will be misappropriation of public money entrusted for definite purposes. This is the only description that the act tised on a cow—you get a cow and let loose the calf, when the calf has milk, you remove the calf and take the milk yourself. That is fraud. If you want to save money to feed the other departments of Government let those departments pay for themselves and let those who are interested in the departments pay a tax, but when a man comes to a court and says—here is your price as settled by you for justice—give me justice. Why should there be any question anywhere or in this Council as to how many

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subordinate judges should be retained—there should be retained as many subordinate judges or as many High Court Judges as there are funds available for the purpose. That is the right way of looking at this question. Because there has been non-cooperation or something like that or because the Inspector-General of Police says “I want stronger men”, therefore let us deny justice, and instead of justice as a substitute for justice let us supply robust policemen with regulation *lathis* to prevent political speeches being made. This is the way in which a large portion of income from administration of justice is spent. I think, Sir, it was Lord Curzon, that eminent Viceroy (I consider him to be one of the most capable Viceroys that ever ruled India), who said in one of his speeches that the British Empire must rest on courts of India, courts of justice, and all the hon’ble members present here might remember that case when a certain European who was released and discharged unjustly Lord Curzon got him arrested and brought him down in India to be tried again. Not only that, Sir, go back to the day when the British Government, rather the British Nation, first came here and tried to establish an administration—look at the conflict between Hastings and the Chief Justice Sir Elijah Impey—look at the records of the High Court of Calcutta in those days when Sir Barnes Peacock was the Chief Justice of the Calcutta High Court; how the letters from the Government of India to curtail expenditure were answered. Look at the history of the case which led Sir John Budd Phear to resign his seat in the High Court. We have been accustomed to read volumes on the ancient character of British justice. If I were asked “What I valued most in the British nation,” I would say without a second’s hesitation—“British justice”, “British justice”. I therefore entreat, I beseech, I implore those who are at the head of this Government and who are at the helm of affairs here “not to interfere with justice. England is your country, you will have to go back to England when you have finished your work here, do not soil the justice of your country. Let the stream of English justice shine here as it does in England”. When those gentlemen who are entrusted with the administration of this country go back to their own country and meet their kith and kin and their nation, the nation will welcome them as sons of England who have served India without in any way doing discredit to the history of the English nation in the eyes of the world. And when they leave the shores of India after having completed their terms of service, they will carry the blessings of millions of India.

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I implore, I beseech in the name of everything that is sacred, everything that is good and that is noble in the English nation, "Do not pollute the fountain of justice, let the fountain of justice as it is in the High Court of England be the current of justice in our country here". No attempt should be made on the part of the executive Government to interfere with the courts here. Whether in a particular case an attempt was made, whether that attempt was justified or not, that is not the question which I should like to enter into here. But this much is certain that any attempt to interfere with the judicial independence of the High Court would be a very sad mistake.

I remember the day when there was criticism with regard to the doings of the High Court in this Council — I may remind some of the hon'ble members here with whom I talked privately on the occasion. I told them that it should be the interest of the nation, it should be the duty of all people here to uphold always the dignity of the High Court, the dignity of His Majesty's Judges, for they are not the Judges of the Bihar and Orissa Government. The other day—I do not know whether I saw something in a dream or some little mosquito had been buzzing in my ears—an attempt was made by the executive Government to criticise the judgments or decisions of the High Court. Nothing can be more perilous to the British Empire. I wish we had oil-paintings here of the late Sir Barnes Peacock, Sir John Phear, Sir Robert Couch, etc., to remind us that those are persons who represent British justice. Let your empire stand on the high pedestal of British justice; no revolutionary thoughts can reach so high. All the storms and the clouds that you see now surrounding the British Indian Empire will disappear: they will be dispelled: and when the atmosphere is calm, that will be the time when the future historian will walk up with steady steps and taking his stand on a high pedestal write there, "British justice has saved India".

I think, Sir, I have perhaps taken more time than was necessary and I hope you will excuse me.

The Hon'ble Mr. SACHCHIDANANDA SINHA: Sir, I rise to say a few words in regard to the Circuit Court at Cuttack to which reference has been made by my friend from Orissa. The Circuit Court at Cuttack is indeed a novel experiment in judicial administration. There are, in this country, various High Courts exercising jurisdiction either over

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one province or, as in the case of the Calcutta High Court over Bengal and Assam, two separate provinces, or, as in the case of the High Court at Allahabad, over one only of the two joint provinces of Agra and Oudh. Similarly, in Bombay, the Bombay High Court exercises jurisdiction over the Bombay Presidency proper alone, and Sindh has got a Judicial Commissioner's court of its own. When this province was established, it was considered desirable that instead of having one court at Patna only, it would be far better to allow the circuit system, which obtains in England, to be introduced, so that the people of Orissa might have justice brought to their very doors. I have seen the papers of the time, and at that time there was some doubt in the minds of the authorities whether the experiment would work; but my information is that this experiment has been a success and that the people of Orissa are satisfied with the administration of justice by means of the Circuit Court at Cuttack. I notice that the hon'ble member, Babu Lakshmidhar Mahanti, is shaking his head to imply that it is not so. I can assure him that the people of Bihar would have no objection to the abolition of the Circuit Court at Cuttack, if he so desires, but I do not really think that the people of Orissa would like to have the system changed.

Babu LAKSHMIDHAR MAHANTI : We want a permanent court there and we want that more time should be devoted by the Judges at Cuttack.

The Hon'ble Mr. SACHCHIDANANDA SINHA : If in the fullness of time a full court can be established at Cuttack, I can assure the hon'ble member that we in Bihar would be the last to grudge that. But till that good time comes, I think our friends in Orissa should be content with the Circuit Court. The grievance is that the Circuit Court has not been meeting for the last twelve months as often as it should have done. The reason is this. Usually, under the Letters Patent of the Patna High Court, the Judges have to go on circuit once a quarter, unless for sufficient reason the Governor in Council declares that they should not do so. Last year they did not go on circuit four times for two reasons. Firstly, it was found that the work there was not sufficient at any time to keep the High Court engaged for more than a week; and secondly, because the Judges had experienced great difficulty in finding suitable accommodation at Cuttack. For

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that reason, the Circuit House in the Cuttack fort was enlarged last year to be able to provide sufficient accommodation for two Judges at a time.

Babu LAKSHMIDHAR MAHANTI : May I know what has been as yet the longest stay of the Judges at Cuttack ?

The Hon'ble Mr. SACHCHIDANANDA SINHA : I would like to have notice of this question : I cannot say off-hand, but my impression is that the Judges, unless I am greatly mistaken, have stayed there for two to three weeks at a time. Anyway, I was at Cuttack myself during the last Christmas week and I inspected the Circuit House which was nearly ready and I can assure the hon'ble member that the Judges of the High Court will now be going on their rounds as usual every quarter.

With regard to the grievance about bail, I am not prepared to say anything off-hand now. I shall look into the matter and see if there are any difficulties about getting bail there.

With regard to the disquisition of my esteemed friend Mr. Das about justice and all that, I can only say that when I obtain my copy of the printed proceedings of this debate, I shall read, mark, learn and inwardly digest the words of wisdom that have fallen from his lips in regard to this momentous question.

Rai Bahadur DWARKA NATH : Sir, we have listened to the reply which has been given by the Hon'ble Mr. Sinha and the speeches which have been delivered in the Council. The principal point which has been raised in the debate is the one which was raised by my esteemed friend Babu Shiva Shankar Jha.

The Hon'ble Sir HUGH McPHERSON : Sir, I can assure the hon'ble member from Tirhut that I shall deal with that point in due course.

Rai Bahadur DWARKA NATH : Then I shall not speak (Laughter).

The Hon'ble the PRESIDENT : The hon'ble member should complete his speech.

Rai Bahadur DWARKA NATH : Very well, Sir. I may not get another opportunity. I thought the reply had been given.

[R. B. Dwarka Nath]

Now, Sir, the point which has been raised by my friend Babu Shiva Shankar Jha is a point which has touched the hearts of the people of this province. They have deeply pondered over it and each member of the Council realized the grave responsibility which he incurs in discussing this all-important question. The interference with the judiciary by the executive is a very important question and I believe there is no member of this Council who will ever tolerate such interference. We are determined to a man to stand by the courts of justice which have been established by law in this country. If we have got any complaints to make we will not make it to the executive but to the fountain of justice, to the highest and supreme court of justice itself. If we have to seek the shelter and the protection of law, we will go to the High Court of Judicature which has been established by His Majesty the King-Emperor and we will not seek the shelter or the protection of the executive, come what may. That is our firm determination. Sir, this is a very grave and serious matter. The information which I have at my disposal is that the executive tried to admonish one of the Hon'ble Judges of the High Court. It is a very serious matter indeed that they wanted to admonish one of His Majesty's Judges. Even if they had admonished a munsif, we would have raised an equally emphatic and indignant protest; but when they are going to tamper with the judiciary and censuring one of the Hon'ble Judges of the High Court, it is time that the people of this province should raise their voice to a man and emphatically repudiate any pretensions on the part of the executive to take any initiative in the matter. Sir, we have still to listen to the speech which will be delivered by the Hon'ble Sir Hugh McPherson on this question. When the time comes for him to make a pronouncement on behalf of the Government the members of the Council expect a frank and full discussion of the subject. Any mental reservation on his part, any equivocation and any keeping back of the facts of the case from the members of the Council will be strongly resented and will amount to a contempt of this Council. I therefore request the Hon'ble Leader of the House to make a full and detailed statement on all the points in connection with the case. If we enjoy the confidence of the electorate we insist on our right to know the truth. This House can even demand a committee of inquiry to find out what the truth is, if the executive want to keep it back from them, because that is one of the privileges of this House. In England, none of the Judges of His Majesty

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can be removed unless both the legislatures, the House of Commons and the House of Lords, combine and petition to His Majesty the King-Emperor for the removal of the Judges, and I claim as a privilege of this House that we can demand a committee of inquiry to go into the whole matter, if we find that the executive have wrongly and unduly tampered with the judiciary in this province. I am sounding this note of warning so that there may not be any mental reservation on this subject on the part of the Government when they come to reply. If they are silent over this matter, we shall at once assume that they have got a guilty conscience. If they only answer in the usual humdrum way in which the Chief Secretary answers our interpellations in this Council we will at once assume that they have got something to conceal from us, and if they do not take us into their confidence, the House will consider that it amounts to a contempt of this Council which is as much punishable under the constitutional law known to all democracies as the contempt of court itself under the civil law.

Babu ANANT PRASHAD : Sir, I feel I shall be failing in my duty if I do not associate myself with the feeling of resentment expressed in this Council at the reported attempt of the Government to interfere with the judicial independence of the highest judiciary in the province. As one connected with an important section of the litigant public as well as a member of the mufassal Bar, I would like to inform Government that we regard the High Court as the palladium of our rights and liberties and we shall do all we can to preserve the judicial independence of His Majesty's Judges. I may also from my place here in this Council assure their Lordships of the High Court that in any tussle that they may have with the executive in a matter concerning their independence, they will have the full and unstinted support of us all, no matter whatever our political creeds may be. The public would not pause to examine the facts. It will be enough if they know that their Lordships assert such an interference and though in these days it may be impossible to recall the days of Sir Barnes Peacock and the famous Taylor's case, we have, I believe, sufficient self-respect still left in us to fight and fight to the last and stand by the side of the highest judiciary in the land. Government must be made aware, if they are not aware already, that the administration of justice is the greatest bulwark of British rule in this country and any weakening of the judiciary would shake the very foundation of the British rule in India.

[Hon. Sir H. McPherson]

The Hon'ble Sir HUGH McPHERSON: Sir, I did not wish to make any observations on this motion, until every member of the House had got up from his seat and proclaimed himself a champion of the judicial independence of the Hon'ble High Court, because that is a cause which I myself stand to champion. I am sorry that so few members have taken the opportunity of conveying their views on the subject to the Council, because I am entirely in agreement with the views expressed.

Sir, I nevertheless think that it is very regrettable that any suggestion should have been made in this Council that the executive Government have ever attempted to interfere with the judicial independence of the Hon'ble High Court. I indignantly deny the impeachment, so far as I am concerned, and so far as my hon'ble colleagues are concerned, and I consider that it is very wrong that the hon'ble mover should endeavour to make bad blood in this matter between these two high authorities, the executive Government and the Hon'ble High Court. I do not know what is the source of the hon'ble mover's information regarding the particular incident to which he refers, I do not know by whose fault or indiscretion it was revealed to him that a correspondence had taken place on a particular case between the executive Government and the High Court; but I can assure the Council that the hon'ble mover has conveyed an entirely wrong impression of the contents and the ultimate issue of that correspondence. Sir, I do not propose to place that correspondence on the table, because it is an official correspondence which was not intended to be disclosed to the public, but I will endeavour briefly to explain what the general drift of it was. The High Court did send to the executive Government copy of a judgment of an Hon'ble Judge, which contained certain strictures on a junior member of the Indian Civil Service. Government, as in duty bound and as they always do in these cases, called upon the officer concerned, who had been censured, for his explanation. The officer made his reply through the proper channel, explaining that there were certain facts which were apparently either unknown to the Hon'ble Judge or had been misrepresented to him when he passed orders. Had these facts been fully known to him it seemed probable that the Hon'ble Judge would have taken a different view of the matter and would not have censured the officer. On receiving this explanation, which was

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endorsed by his superior officers, the local Government considered that it was only fair to the junior officer and only courteous to the Hon'ble High Court that the officer's explanation should be forwarded and the result of the enquiry reported to the Court. In doing so they overlooked a previous correspondence in which it had been agreed that no correspondence should pass regarding judgments of the nature concerned. The High Court took exception to the local Government's reference and drew attention to the previous correspondence. The local Government at once replied, expressing regret that this correspondence had been overlooked, explaining their motives in forwarding the officer's explanation and emphasizing that they had no wish whatever to call in question the decision of the Court the merits of which, they agreed, could not with propriety form the subject of official discussion between the High Court and the Government. The local Government believed that the incident was then closed and they were astonished to find that the correspondence had in some way become public and is now the subject of discussion in this House. It seems to me that this is a very *ridiculus mus* with which to start the allegation that the executive Government have been interfering with the independence of the judiciary. Government, I repeat, have never at any time, so far as I am aware, interfered with the judicial independence of the High Court or of any other court, and I challenge the hon'ble mover to point to any public pronouncement of theirs which could be construed as supporting any such accusation. On the contrary Government have always paid the highest respect to the Hon'ble Court's judicial independence and have defended it against all-comers. I need not perhaps remind the Council of a memorable debate which took place three years ago when I strongly emphasized this aspect of the case and was myself the champion of the Court against an attack which seemed to trench on the sanctity of its position. Sir, I am all with the hon'ble mover and with the other hon'ble members who have spoken on his motion and have pleaded for the sanctity and independence of the judiciary. I hope that I shall always stand for that and I trust that the Council having heard these words from me will agree that the attack which has been directed against the executive Government on this ground has wholly failed.

Babu JALESHVAR PRASHAD : Sir, I am glad that the Hon'ble Sir Hugh McPherson has made the matter clear so far as

[B. Jaleshvar Prashad]

he could, but I am sorry that he also has tried to suppress one fact—I do not know whether consciously or unconsciously. We are certainly not supposed to know the correspondence and we do not know exactly what correspondence took place between the executive Government and the Hon'ble High Court, but I may inform the House that after the second application was moved before the High Court a notice was served upon the Government Advocate and the ordinary practice is, as we all know, Sir, that the Government Advocate gets all the information from the officer concerned whose conduct is the subject matter of investigation in the High Court, but, Sir, the Government Advocate did not appear. There was no reply on behalf of Government. Now I put it to this House whether after the judgment of the High Court had been sent to the local Government as a result of their own request which they made during the days of Sir Edward Gait, it was proper on their part to write to the High Court by way of explanation or in any way anything complaining against the judgment. That is our complaint, Sir. I am glad that the Hon'ble Sir Hugh McPherson stands by every one of us that the integrity and the independence of the judiciary should be maintained. We know that is one of the essential factors of modern constitution that the judiciary is independent either of the executive or of the legislature. That is the essential feature of the constitution of every civilized country in this world at present. I am glad that he does not want to recede from that position. He may have receded in one case but generally he does not want to recede, but I want to know whether your regret or excuse has satisfied the High Court. If it has not, you must enter your unqualified apology to the High Court. He wants to know what was our source of information. I must tell him that it is a public property in the city. Who does not know it?

The Hon'ble the PRESIDENT: I would advise the hon'ble member not to pursue this point further.

Babu JALESHVAR PRASHAD: I willingly and most gladly accept your advice, Sir, but I will say this much that whenever the executive Government think that they are doing something like an ostrich which sinks its head in the sand and thinks that nobody sees it, they must know that all their actions are before the public and certainly these actions are against public interest and public safety, and I assure him that whenever

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in future they will try to encroach upon the domain of judiciary their action will be similarly brought to light and condemned in this Council.

Babu SHIVA SHANKAR JHA : Sir, the statement which has been made by the Hon'ble the Leader of the House has made the position clear though the letter has not been laid on the table which would have shown that there was a note of protest sent by the executive Government against the judgment of the High Court. I submit if it had been so placed you would have found an expression of protest in it and the whole tenor of it would have shown that it was by way of protest. That alone, Sir, has not been stated and I submit that the intention is quite clear. Sir, the ground why I have moved this censure motion remains unshaken and I hope the Council will pass it.

The Hon'ble the PRESIDENT : (To Babu Shiva Shankar Jha) Do you want to press your motion?

Babu SHIVA SHANKAR JHA : Yes, Sir.

The Hon'ble Sir HUGH McPHERSON : Sir, I think I have the right of reply, but I do not want to exercise it as I am afraid I can say nothing fresh to convince the House of the futility of the attack.

The Hon'ble the PRESIDENT : As this is a very important matter I do not wish to hasten, and I think I should give the hon'ble member a minute or two more to think over the matter.

Babu SHIVA SHANKAR JHA : I press for a division.

The Hon'ble the PRESIDENT : The question is :

That the demand under the head '24-Administration of Justice' be reduced by Rs. 100.

The Council then divided as follows :

AYES—41.

Babu Chandipat Sahay.
Babu Rajandhari Sinha.
Babu Gur Sahay Lal.
Babu Gupteshvar Prashad Singh.
Babu Bishun Prashad.
Babu Ramceshvar Prashad Singh.
Khan Bahadur Ashfaq Husain.

Babu Dvarika Prashad Singh.
Babu Sarada Prashad Singh.
Babu Rajivaranjan Prashad Singh.
Mr. Saiyid Muhammad Athar Husain.
Rai Bahadur Dwarka Nath.
Babu Jaleshvar Prashad.

[Hon. the President]

AYES (41)—*concl'd.*

Maulavi Saiyid Mubarak Ali.
 Babu Hari Shankar Sinha.
 Babu Kedar Nath Prashad Sah.
 Maulavi Muhammad Zahurul Haqq.
 Babu Shiva Bachan Sinha.
 Maulavi Saiyid Mehdi Hasan.
 Mahanth Ishvar Gir.
 Babu Shiva Shankar Jha.
 Babu Ram Nihora Singh.
 Maulavi Saidul Haqq.
 Mr. T. Lall.
 Babu Bhuvaneshvari Prashad
 Mandal.
 Babu Anant Prashad.
 Rai Bahadur Lachhmi Prashad
 Sinha.
 Rai Sahib Kharag Narayan.

Khan Bahadur Shah Muhammad
 Yahya.
 Mr. Madhusudan Das.
 Raja Rajendra Narayan Bhanja
 Deo.
 Babu Birabar Narayan Chandra
 Dhir Narendra.
 Babu Lakshmidhar Mahanti.
 Babu Radharanjan Das.
 Chaudhuri Bhagabat Prashad
 Samantarai Mahapatra.
 Babu Godavaris Misra.
 Mr. Jimut Bahau Sen.
 Rai Bahadur Sharat Chandra Ray.
 Babu Krishna Ballabh Sahay.
 Dulu Manki.
 Mr. Sri Narayan Sahay.

NOES—27.

The Hon'ble Sir Hugh McPherson.
 The Hon'ble Mr. Sachchidananda
 Sinha.
 The Hon'ble Sir Saiyid Muhammad
 Fakhr-ud-din, Khan Bahadur.
 The Hon'ble Babu Ganesh Datta
 Singh.
 Mr. E. L. L. Hammond.
 Mr. H. K. Eriscoe.
 Mr. J. R. Dain.
 Mr. A. L. Inglis.
 Mr. B. A. Collins.
 Rai Bahadur Bishun Svarup.
 Mr. A. E. Seroope.
 Mr. B. Foley.
 Mr. W. Swain.

Mr. H. Wardle.
 Mr. G. E. Fawcus.
 Lt.-Col. J. Masson.
 Thakurai Brahmeshvar Dayal
 Singh.
 Mr. W. O. MacGreger.
 Mr. A. A. F. Bray.
 Khan Bahadur Nawabzada Saiyid
 Ashraf-ud-din Ahmad.
 Raja Devaki Nandan Prashad Singh.
 Mr. F. E. L. Morrison.
 Rev. Emanuel Sukh.
 Babu Bishwa Nath Kar.
 Rev. Prittam Luther Singh.
 Mr. D. M. Madan.
 Rev. S. K. Tarafdar.

The motion was adopted.

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The Hon'ble the PRESIDENT: The question is :

That the Council do assent to a reduced demand of Rs. 28,99,798 under the head '24-Administration of Justice'.

The motion was adopted.

25-JAILS AND CONVICT SETTLEMENTS.

The Hon'ble Mr. SACHCHIDANANDA SINHA : Sir, I beg to move that the Council do assent to the demand of Rs. 15,51,173 under the head '25-Jails and Convict Settlements'. This demand has the recommendation of His Excellency the Governor.

The Hon'ble the PRESIDENT: The question is :

That this Council do assent to the demand of Rs. 15,51,173 under the head "25-Jails and Convict Settlements".

The motion was adopted.

26-POLICE.

The Hon'ble Sir HUGH McPHERSON: Sir, in the absence of Mr. Hammond, I beg to move that the Council do assent to the demand of Rs. 74,20,435 under the head '26-Police'. This appropriation has the recommendation of His Excellency the Governor.

DEPUTY INSPECTOR-GENERAL OF POLICE.

Babu RAJANDHARI SINHA : Sir, I beg to move :

That the item of Rs. 24,936 for "Pay of officers—voted (Deputy Inspector-General of Police)" be omitted.

Sir, when I was reading the budget under the head 'Police', I was delighted to see that the number of non-voted Deputy Inspectors-General has been decreased from 3 to 2. I thought, Sir, that the Government was making an attempt to give a trial point of abolition of the post of Deputy Inspectors-General to the recommendations of the Retrenchment Committee on the but I was pained to see a provision for the Deputy Inspector-General of Police under the head voted. All my hopes were frustrated and then I decided to send a notice of this motion. I