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PER CURIAM (NEWTON and TUCKER, JJ.) :—The law has provided for the distress and sale of moveable property only, and the Court cannot point out any way by which the immoveable property may be made liable to pay the fine. Under these circumstances, the Court considers that the immoveable property should not be proceeded against after the death of the offender.

July 30.

REG. V. LALLUBHA'I JASSUBHA'I.

Dispensing with Personal Attendance of Accused—Recognisance Bond—Agent—Crim. Proc. Code, Secs. 182, 258, and 261.

Held, that where the personal attendance of an accused is dispensed with, a recognisance bond, if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to appear, either in person or by an agent; and that a Magistrate has no legal authority to secure the attendance of an agent by such a bond.

THE papers and proceedings in this case were sent for by the Court, under Sec. 404 of the Code of Criminal Procedure.

The facts of the case are these :—Ahmad Alli Imám Haidarbakhsh and others were accused of breaking the padlock of a *cháurá* and taking possession of the same, together with that of the village of Issanpúr. The petitioner, Lallubháí, presented a petition to the trying Magistrate, Kúvarji Kavasji, praying that the personal attendance of the accused Ahmad Alli might be dispensed with, and he, the petitioner, allowed to represent, and answer the complaint preferred against, the accused. The application was granted under Sec. 182 of the Code of Criminal Procedure; and, in order to ensure his attendance during the inquiry into the complaint, a recognisance bond in the sum of Rs. 100 was taken from him, in the same manner as one would have been taken, under Sec. 258 of the Code of Criminal Procedure, from the accused Ahmad Alli. The petitioner, however, having failed to appear at the hearing of the case, the Magistrate ordered the recognisance bond to be enforced. Upon this the petitioner presented a petition to A. L. Spens, Session Judge of Ahmedábád, but he rejected it with the following remarks :—

“I see no illegality in the Magistrate’s proceedings in this case. The petitioner himself passed the recognisance bond to be present as occasion might require, and it was clearly his duty to be present when the case was called on by the Magistrate. The petitioner has failed to show any satisfactory grounds for action on my part under Sec. 434 of the Criminal Procedure Code. As this is not an appeal, I am not called on to see whether the petitioner has been properly fined or not.”

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The case was heard this day, before NEWTON and TUCKER, JJ.

Pándurang Balibhadra for the petitioner.

Dhirajlál Mathurádás for the prosecution.

PER CURIAM:—In a case where the personal attendance of an accused is dispensed with, a recognisance bond, if deemed necessary, should be taken from him, and not from his agent, the accused being bound, under the terms of such recognisance, to appear, either in person or by an agent, and if the agent neglected to attend when the case was called on, the recognisance bond might be held forfeited, and the accused made liable for the payment of the penalty. We hold that the Magistrate had no legal authority to secure the attendance of the agent by a bond of this description, and accordingly annul the Magistrate’s order directing the enforcement of the recognisance bond taken from the agent.

Order annulled.

REG. V. CHANVERA'YA' bin CHANBASAYA'.

July 30.

Offence not triable by Subordinate Magistrate—Power of District Magistrate to annul conviction—Crim. Proc. Code, Secs. 427 and 434.

Where, on appeal from a conviction by a Subordinate Magistrate, the Magistrate of the District is of opinion that the offence which the evidence brings home to the prisoner is one not triable by a Magistrate, and that an illegality has been committed, he should refer the matter for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code; such Magistrate cannot himself, under Sec. 427, annul the conviction, and direct the committal of the prisoner to the Court of Session upon the proper charge.

THIS was a reference made for the orders of the High Court by J. Elphinston, Acting Magistrate of the Dis-