



Customs Consolidation Act 1876

1876 CHAPTER 36

AS TO THE COURSE OF PROCEDURE FOR RECOVERING PENALTIES, ENFORCING FORFEITURES, AND PUNISHING OFFENDERS UNDER THE CUSTOMS ACTS.

218 How penalties, &c. to be sued for. Proviso where the duties and penalties sought to be recovered shall not exceed 100l.

All duties, penalties, and forfeitures incurred under or imposed by the Customs Acts, and the liability to forfeiture of any goods seized under the authority thereof, may be sued for, prosecuted, determined, and recovered by action, information, or other appropriate proceeding in the High Court of Justice in England, or by action of debt, information, or other appropriate proceeding in the superior courts of common law at Dublin or Edinburgh, or in the royal courts of the Islands of Guernsey; Jersey, Alderney, Sark, or Man, in the name of the Attorney General for England or Ireland respectively or of the Lord Advocate of Scotland, or of some officer of Customs or Excise, or by information in the name of some officer of Customs or Excise, before one or more justice or justices in the United Kingdom, the Isle of Man, or the Channel Islands: Provided always, that the forty-fourth section of the second and third Victoria, chapter seventy-one, shall not apply to any offence against the Customs Laws.

219 Execution may issue after trial out of term.

In any case where a verdict is or shall have been obtained at the suit of the Crown against any defendant in any of the superior courts, execution thereon may issue on or after the expiration of fourteen days from the date of such verdict, in the same manner as execution may issue in any case under the one hundred and twentieth section of "The Common Law Procedure Act, 1852," unless the judge who tried the cause, or some other judge, or the court, shall order execution to issue at any earlier or later period, with or without terms.

220 Penalty and costs to be stated in convictions, &c.

When any person is convicted and adjudged to pay a pecuniary penalty for any offence against the Customs Acts, and such person shall be committed in default of payment

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of penalty and costs, the amount of costs awarded to be paid by such person, as well as the penalty so adjudged, shall be stated in the conviction and also in the commitment.

221 Where proceeding by *capias* is waived in favour of the subject, justices may issue warrant and admit to bail.

Whenever the Commissioners or the proper officer of Customs shall proceed by information against any person for any offence under the Customs Acts before any justice, instead of proceeding in the Exchequer Division of the High Court of Justice, where a *capias* might be - issued for arresting and holding the offender to bail, such justice may, on sufficient information on oath that the offence has been committed, issue his warrant to bring such offender before him or any other justice, and on his being so brought to require him to give security in such amount as he may deem sufficient to appear before him or any other justice at a time and place appointed for the hearing of the case, and in default of such security to commit such offender to gaol, or to the custody of the police or other constabulary force.

222 Penalties joint and several may be sued for by joint and several information.

When by the Customs Acts a penalty jointly and severally shall have been incurred by any number of persons, such persons may be proceeded against jointly by one information, or severally by separate informations, as Her Majesty's Attorney General for England or Ireland, and as the Lord Advocate of Scotland, or the Commissioners of Customs respectively may deem expedient; and in case of a proceeding against such several persons by joint information for recovery of the penalty or penalties so severally incurred by each, the penalty or penalties shall be recoverable against each, notwithstanding that any one or other of such persons so jointly proceeded against may have allowed judgment to go by confession or default, or that the penalty adjudged to be paid by any one or other of the defendants so jointly sued may be for a different amount from that of the penalty in which any one or other of such several persons may be convicted, or that any one or other of such several persons so jointly prosecuted may be acquitted; and no judgment on any such information shall be reversed or avoided, or error in law alleged therein, on the ground of any such judgment being obtained by confession or default of any of the persons, nor on account of any difference in the amount of the penalty or penalties in which any one or more of such persons may be convicted, or the acquittal of any such persons; but every such judgment shall be valid and effectual against any or all of the said several persons so jointly proceeded against, and for the full amount of the penalty or penalties in which such person or persons shall have been severally or respectively convicted.

223 Informations, convictions, &c. to be in form, &c. in Schedule C.

All informations exhibited before any justice for any offence committed against or forfeiture incurred under this or any other Act relating to the Customs, and all summonses, convictions, and condemnations for such offences and forfeitures, and all warrants of any justice founded upon such convictions, may be in the form or to the effect in Schedule C. to this Act; and the form of information given in the said schedule, and the counts therein contained with reference to any offences created by or punishable under the several sections of this Act to which the same or any of them relate shall be applicable to and sufficient for all purposes in the prosecution of such offences and forfeitures; and where two or more counts are given upon the same section those counts may be used which apply most nearly to the circumstances

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of the case; and any one or more of the said counts may be included in the same information, together with any other count or counts; and any one or more of the words or paragraphs descriptive of offences charged in any one or more of the counts in the same form of information, separated from the others by the word or in italics, may be used exclusively of the others, in conduction with any other part of such form, and in any case, or for any offence or forfeiture for which no count is given in the said schedule, such count or counts may be substituted or added as circumstances may require; and every such information and every conviction and warrant of commitment or condemnation for such offence or forfeiture shall be deemed valid and sufficient in which the offence or forfeiture is set forth either in the words of the Act or Acts by which the penalty for such offence has been inflicted or under which any forfeiture has been incurred, or in the words of the information by this Act prescribed; and where in any such forms the word " Customs " is used to describe the Commissioners or officers of Customs, the words " Inland Revenue " or " Excise " may be substituted, as the case may require, and the like counts shall be applicable to and sufficient for the like purposes, and be used in like manner in any information filed in any court having jurisdiction in such cases under this or any Act relating to the Customs; and no conviction, warrant of commitment, or condemnation shall be held void by reason of any defect therein; and no party shall be entitled to be discharged out of custody on account of such defect, provided it be alleged in such warrant that the said party has been convicted of such offence, and that it shall appear to the court or judge before whom such warrant is returned that such conviction proceeded upon good and valid grounds; and every such warrant may be executed by any officers of Customs, and in any part of the United Kingdom, without further endorsement or sanction than that of the justice issuing the same; and no objection shall be taken or allowed to any information, complaint, or summons for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons and the evidence adduced on the part-of the informant or complainant at the hearing of such information or complaint.

224 Justices may summon offender.

Upon the exhibiting of any information before any justice against any person for any offence against the Customs Acts for which offence the party charged is not liable to be detained, or being liable shall not be detained, or by which any penalty or forfeiture shall be sought to be recovered, or any punishment of hard labour sought to be inflicted, within three years next after the commission of the offence, such justice may from time to time and at any time afterwards issue his summons directed to such party, stating shortly the matter of such information, and requiring him personally to appear at a certain time or place before him or any other justice to answer to the said information, and to be further dealt with according to law.

225 On attendance of the party on the day and place appointed, justices may hear and determine the case. On non-appearance justice to proceed as if he had appeared.

If on the day and at the place appointed in such summons the party so summoned shall appear before such justice, then such justice shall proceed to hear and determine the matter of such information, and on proof thereof, either upon the confession of the party or upon the oath of one or more credible witness or witnesses, shall convict the party charged in such information, but if the party so summoned shall fail so to appear, then if it be proved upon oath or affirmation to the justice then present that

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such summons was duly served at a reasonable time before the day appointed for his appearance, such justice may proceed ex-parte to hear such information and adjudicate thereon as if such party had personally appeared before him in obedience to such summons.

226 Justices may condemn goods liable to forfeiture.

When any information shall have been exhibited before any justice for the forfeiture of any goods seized under the Customs Acts, such justice is hereby required to summon the owner of such goods or the person from whom they were seized to appear before him or any other justice, and upon his or her appearance or default to appear, due service of such summons being proved, such justice may proceed to the examination of the matter, and on proof that the goods are liable to forfeiture under the Customs Acts may condemn the same.

227 Summons to be served personally, or by leaving same at last known place of abode.

Every summons issued by a justice of the peace under the Customs Acts, either to bring any person before him to answer any information or complaint, or any person to appear before him to testify what he may know concerning the matter of such information, wherever in the United Kingdom such person may be or reside, shall be deemed to be sufficiently served by any officer of Customs or other duly authorised person delivering the same to the party summoned personally, or by leaving the same at his last known place of abode or business in the United Kingdom, or on board any ship or vessel to which he may belong or may have lately belonged.

228 Penalty for neglecting to attend.

If any person so summoned to testify as aforesaid shall refuse or neglect to appear at the time and place appointed in such summons by the justice issuing the same, and no just excuse shall be offered for such neglect or refusal, then, after due proof of the service of such summons, or if such person having appeared in obedience to such summons shall refuse to take oath, or, if a person having legal power to make affirmation, refuse to affirm, or shall refuse to give evidence or answer to the best of his knowledge and belief any legal question required of him, he shall for every such default or offence forfeit such sum not exceeding twenty pounds as the justice shall see fit.

229 Offences on the water, &c, and jurisdiction.

Where any offence shall be committed in any place upon the water not being within any county of the United Kingdom, or where the officers have any doubt whether such place is within the boundaries or limits of any such county, such offence shall for the purposes of the Customs Acts be deemed and taken to be an offence committed on the high seas; and for the purpose of giving jurisdiction under such Acts every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place on land where the offender or person complained against may be or be brought.

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230 Justice of adjoining county may act when required.

When the attendance of any justice having jurisdiction in the county where the offence is committed cannot be conveniently obtained, any magistrate of any neighbouring or adjoining county to that in which the offence was deemed to have been committed may hear and determine any information exhibited before him, and he shall for that purpose have the same powers and authorities as a justice for the county in which the offence was or was deemed to have been committed.

231 Justices of counties to have concurrent jurisdiction in cities, boroughs, &c. situate in such counties.

Where any offence against the Customs Acts shall be committed in any city, borough, liberty, division, franchise, or town corporate, any justice having jurisdiction therein, and any justice of any county within which the same is or are situated, shall have jurisdiction to hear and determine the same; and all powers vested in any justice of the peace by virtue of this Act shall be and the same are hereby vested in and may be exercised in the Isle of Man or the Channel Islands by any governor, deputy governor, bailiff, chief magistrate, deemster, jurat, or other magistrate of the said isle or islands; and for the purposes of the Customs Acts the jurisdiction of the magistrates of the borough of Gravesend in the county of Kent shall be deemed to extend on the river Thames from Yantlet Creek to Broadness Point in the Northfleet Hope, and shall include every part of the said river between those limits respectively.

232 Justice may commit in default of payment of penalty until paid Small Penalties Act, 1865, not applicable to Customs.

If any penalty incurred for any offence under the Customs Acts be not paid on conviction, the convicting justice shall forthwith commit the offender to any of Her Majesty's gaols within his jurisdiction, there to remain for such term as is herein-after provided, or until the penalty shall be paid; and "The Small Penalties Act, 1865," shall not apply to any penalty imposed by the Customs Acts; and where such party is convicted of any offence for which the punishment of hard labour is inflicted, such justice shall commit such party to any gaol or house of correction, there to be kept to hard labour for such time as may be authorised by the Customs Acts.

233 Justices may commit in certain cases without order of Commissioners. When quantity of spirits is less than five gallons, or of tobacco less than 20 lbs. Where quantity between five and 20 gallons of spirits, or from 20 to 80 lbs. of tobacco, justices may mitigate. Above 20 gallons of spirits, or 80 lbs. of tobacco, no mitigation by justices.

When any person shall be brought before a justice for any offence against the Customs Acts for which a pecuniary penalty is thereby imposed, if the goods in respect of which he shall have been so brought shall not consist of spirits or tobacco, or being spirits or tobacco shall not exceed five gallons of spirits or twenty pounds weight of tobacco, such justice may proceed summarily upon the case without information or direction of the Commissioners of Customs, and if such person shall be convicted, such justice may adjudge that he shall, in lieu of any other penalty, forfeit a sum not less than the single nor more than the treble value of such goods, including the duty of importation thereof, and in default of payment commit such person to any of Her Majesty's gaols for any period not less than fourteen days, nor more than one month; and if such spirits or tobacco shall exceed five gallons but not exceed twenty gallons

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of spirits, or shall exceed twenty pounds weight of tobacco but not exceed eighty pounds weight, such person shall forfeit a sum equal to treble the duty-paid value of such spirits or tobacco, or one hundred pounds, at the election of the Commissioners of Customs, and if proceeded against for the latter and convicted, such justice may mitigate the penalty to any sum not less than one fourth, and in default of payment of the penalty or mitigated penalty so imposed may commit the offender to any of Her Majesty's gaols until the same be paid; and if such spirits shall exceed twenty gallons, or such tobacco shall exceed eighty pounds weight, such person shall forfeit a sum equal to treble the value of such spirits or tobacco, or one hundred pounds, at the election of the Commissioners of Customs, and shall upon conviction forthwith pay, without any mitigation, the penalty imposed, and in default thereof the said justice shall commit the person so convicted to any of Her Majesty's gaols, there to remain until such penalty shall be paid.

234 Persons arriving in ships from infected places not to land before examination.

It shall be lawful for Her Majesty in Council, or any two of the Lords of Her Majesty's Privy Council, from time to time, by her or their order, to require that no person on board any ship coming to any port in the United Kingdom, the Channel Islands, or the Isle of Man, from or having touched at any place out of the United Kingdom abroad where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit such vessel before the state of health of the persons on board shall have been ascertained, on examination by the proper officer of Customs, at such place or places as may from time to time be appointed by the Commissioners of Customs for such purpose, and before permission to land shall have been given by such officer, whether or not it shall on or after such examination be found expedient to order such vessel under the restraint of quarantine, and any person so quitting any such vessel shall forfeit a sum not exceeding one hundred pounds; and if the master, pilot, or person in charge of such ship shall not, on arrival at such place, hoist and continue such signal as shall be directed by such order, until the proper officer shall have given permission to haul down the same, he shall forfeit a like penalty; and such penalties or either of them if incurred, and any penalty incurred under the Act of the sixth year of the reign of King George the Fourth, chapter seventy-eight, shall be subject to reduction to any sum not exceeding one hundred pounds, and may be recovered by information and summons before a stipendiary magistrate, or any two justices of the peace, who are hereby authorised to reduce the same accordingly, and to commit the offender to prison in default of payment of any penalty so imposed for any period not exceeding six months.

235 Penalties and forfeitures to be paid to Commissioners.

All penalties and forfeitures recovered, and all sums, including justices clerks fees, awarded to be paid as costs to or for Her Majesty under this or any other Act relating to the Customs, shall be paid to the Commissioners of Customs, and all penalties, forfeitures, and costs recovered under any Act relating to the Excise shall be paid to the Commissioners of Inland Revenue, or to the persons appointed by such Commissioners respectively to receive the same, and such penalties, forfeitures, and costs shall be applied by such Commissioners respectively in such manner as the law directs.

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236 Any person committed in default of payment of a penalty less than 100l to be discharged by gaoler in six months if not duly released.

Where any person shall have been committed to prison by any justice for nonpayment of any penalty incurred under the Customs Acts less than one hundred pounds, the gaoler or keeper of such prison is hereby authorised and required to discharge such person at the end of six months from the date of his imprisonment on such committal.

237 Persons previously convicted may, on verdict, be imprisoned in house of correction.

When any verdict shall pass or conviction be had against any person for any offence against the Customs Acts and he shall have been adjudged to pay a penalty exceeding one hundred pounds, the presiding judge or justice may, if for a first offence, commit the offender to prison for not less than six nor more than nine months, and if for a subsequent offence, may order that the offender shall, in lieu of payment of the penalty, be imprisoned in gaol or house of correction, with or without hard labour, for a period not less than six nor more than twelve months, and the governor or keeper of such gaol or house of correction is hereby required to receive any person committed under such order.

238 Justices may commit to nearest house of correction, if none in their jurisdiction.

When any person shall have been convicted of any offence against the Customs Acts for which such person is liable to be sentenced to hard labour before any justice within whose jurisdiction there is no house of correction, such justice shall and may, by warrant under his hand and seal, commit such offender to the gaol or house of correction nearest to the place where such offender is convicted; and the governor or keeper of such gaol or house of correction is hereby required to receive such offender and to obey such warrant in all respects as if such gaol or house of correction was within the jurisdiction of such justice.

239 Justices may commute hard labour where offender is a female or infirm.

Where any person shall have been convicted of any offence against the Customs Acts for which such person would be liable to be committed to hard labour, the justice before whom such person is so convicted may, if such person be a female or if a male from physical infirmity incapable of hard labour, order and adjudge that such person shall be imprisoned in any gaol within their jurisdiction without hard labour, stating the cause of mitigation in the warrant of commitment.

240 If prisoner be found to have been previously convicted imprisonment may be extended. Married women may be committed.

When any person shall have been convicted before any justice of any offence against the Customs Acts for which such person is liable to be committed to hard labour, and it shall at any time during the imprisonment of such person be made to appear to the said or any other justice that such person had before been convicted of a similar offence, it shall be lawful for either of such justices, and he is hereby required, to commit such offender to some house of correction to be kept to hard labour for not less than nine nor more than twelve months in the whole from the date of the first commitment, and to amend the warrant of commitment accordingly, and without

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including in such amendment any reference to the former conviction ; and any gaoler in whose custody such person shall be is hereby required, upon a written order signed by any justice, to produce such person before such last-mentioned or any other justice having jurisdiction therein; and any married woman convicted of any offence against the Customs Acts may, in default of payment of any penalty incurred by her, be committed to prison.

241 Subsistence of prisoners committed for offences against Customs Laws.

The Commissioners of Customs may allow, and to such amount as they shall direct, any expenses incurred by any county, city, borough, liberty, division, franchise, or town corporate, for the subsistence of any person committed to hard labour in any prison in the United Kingdom under the Customs Acts, and may allow for the necessary subsistence of poor persons committed under the Customs Acts for nonpayment of a pecuniary penalty any sum not exceeding sevenpence halfpenny per diem.

242 Subsistence to prisoners, and gaol fees in Channel Islands.

The Commissioners of Customs may allow and pay for the necessary subsistence of any poor person confined in any prison in the Channel Islands for any offence under the Customs Acts such weekly or daily sum as by the regulations of the prison in which such poor person may be confined is required for the maintenance of poor insolvent debtors, and also such gaol fees as are properly payable in respect of any prisoner at the suit of the Crown for any such offence.

As to the removal of proceedings before Justices under the Customs Laws

243 Writs of certiorari and habeas corpus not to issue except on affidavit.

No writ of certiorari shall issue to remove any proceedings before any justice under the Customs Acts, nor shall any writ of habeas corpus or judge's order issue to bring up the body of any person who shall have been convicted before any justice under the Customs Acts, unless the party against whom such proceedings shall have been directed or who shall have been so convicted, or his attorney or agent, shall state by affidavit in writing duly sworn the grounds of objection to such proceedings or conviction; and upon the return to such writ of certiorari or habeas corpus or judge's order no objection shall be entertained by the court other than such as shall have been stated in such affidavit; and any justice shall and may amend any information, conviction, or warrant of commitment for any offence under such Acts at any time, whether before or after conviction.

244 No writ of habeas corpus or dorer without notice to solicitor.

No such writ or order shall issue without notice in writing to the Solicitor for the Customs, and no return to any such writ or order shall be considered by the High Court of Justice in England, or by any of Her Majesty's Courts at Dublin or Edinburgh, or the judges thereof, unless there shall be produced to such court or judge an affidavit in writing duly sworn stating that notice of the issuing of such writ or order was given to the Solicitor of Customs or left at his office four clear days before the return of such writ or order; and with respect to all such writs or orders, there shall be an interval of four clear days at least between the day of issue and the day of the return thereof, and

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any such writ or order issuing without notice, or not in conformity with the directions herein contained, shall be void to all intents and purposes.

245 Prisoners against whom informations are exhibited to be brought up by habeas corpus or judge's order.

Where any person against whom an information shall be exhibited before a justice of the peace under the Customs Acts shall be in prison on any account whatever at the time appointed for the hearing of such information, the Commissioners of Customs shall cause to be obtained and issued out of the Exchequer Division of the High Court of Justice in England, or out of the Court of Exchequer in Scotland or Ireland, as the case may require, a writ of habeas corpus or a judge's order directed to the governor or keeper of the prison in which such person shall be confined, commanding him to convey such person to the place of hearing to be specified in such writ or order, in order that the said person may answer the said information and attend the trial thereof; and such writ of habeas corpus or judge's order shall be issued out of either of the said courts, on application made by the Solicitor for the Customs on behalf of the said Commissioners, to any judge of the High Court of Justice in England, or to any baron or judge of any of the superior courts of law in Scotland and Ireland respectively; and it shall be lawful for the justice or magistrate before whom any such information shall be brought for adjudication to refuse to proceed with the said information in the absence of the person charged, when satisfactory proof shall be made that such person is confined in prison.

As to justices clerks fees in Customs prosecutions

246 Justices clerks fees.

The fees payable to justices clerks in respect of prosecutions under the Customs Acts shall be in accordance with the Table of Fees to this Act annexed.

As to proceedings in superior courts for penalties

247 Procedure for penalties.

All suits, prosecutions, or informations for recovery of penalties under the Customs Acts in the High Court of Justice in England or in any of Her Majesty's Courts of Record at Dublin or Edinburgh may be commenced either by writ of subpoena or capias as the first process at the election of the Commissioners of Customs, in which shall be specified the amount of the penalty or penalties sued for, and, if by capias, the person against whom such capias shall issue shall be bound with two sufficient sureties to the party to whom such capias shall be directed to appear in the court out of which such capias shall issue at the day of the return of such writ to answer such information, and shall likewise at the time of such appearing to be bound to Her Majesty, her heirs and successors, with two sufficient sureties, or, by leave of the court or a judge, more than two, to be acknowledged in the same court, to answer and pay all the penalties so sued for, or such other sum, not exceeding the penalty or penalties sought to be recovered, as the Commissioners of Customs, or the judge upon whose fiat such capias shall issue, may see fit, in case such person shall be convicted thereof, or to yield the body of such person to prison, and in default of being bound by such respective sureties the person against whom such capias shall issue shall be taken to prison.

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248 Service of subpoena.

If in any case the Commissioners of Customs waive the right of issuing writ of *capias*, and elect to proceed by subpoena, service of a copy of such subpoena, either on the defendant personally or by leaving the same at his last known place of abode or business anywhere in the United Kingdom or on board any ship or vessel to which such defendant may belong or have lately belonged, shall be deemed to be sufficiently served.

249 Judgment by default for non-appearance or want of plea.

Any person arrested under such *capias* and imprisoned for want of sufficient bail shall be served with a copy of the information filed against him either personally or by delivery of a true copy thereof to the gaoler, keeper, or turnkey of the prison in which such persons shall have been confined; and in default of such person's appearing to such process and pleading to such information for the space of twenty days, to be computed from the date of such service, judgment shall be entered by default; and in case judgment shall be obtained against any such person by default, verdict, or otherwise, and such person shall not pay the sum recovered against him, execution shall thereupon issue, not only against the body of the person so imprisoned as aforesaid, but against all the real and personal estate of such person, or any other person in trust for him, for such sum or sums of money so as aforesaid "recovered against him, together with the costs, poundage, fees, and expenses of execution over and above the sum recovered.

250 Execution may issue to sheriff of any county without reference to venue.

Every such execution may be directed in the first instance to the sheriff of any county or county of a city or other shrievalty as the party suing out the same may think fit, without reference to the county in which the venue is laid, and without any suggestion of the issuing of any prior writ of execution into such county.

251 Impoverished persons may sue in formâ pauperis.

Where any person so arrested and imprisoned as aforesaid by virtue of any writ of *capias* shall be disabled by poverty from making defence to any such information, it shall be competent for such person to petition the court on affidavit verifying such disability; and the court, on being satisfied of the truth of the facts alleged in such affidavit, may assign counsel and attorney to such person, and the counsel and attorney so assigned are hereby required to act for such person without fee.

252 Sheriff to grant special warrant on writ of *capias* endorsed by solicitor of Customs.

Every sheriff, mayor, bailiff, and other person accustomed to execute the process of the courts, and every under-sheriff, deputy, or agent of such sheriff, mayor, or bailiff, is hereby required (on the request of the Solicitor of Customs, or of any person acting on his behalf, such request to be endorsed on the back of any writ of *capias* or other process issuing as aforesaid, and signed by such solicitor or by such other person stating his authority,) to grant a special warrant to such persons as shall be named to them by such solicitor or other person for apprehending the person against whom such process shall issue, or in default thereof every such sheriff, mayor, bailiff,

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under-bailiff, and other person shall be liable to such process" of contempt, fines, and penalties as they or any of them are now by any law or custom liable to in case of refusing to execute similar process where the defendant might have been taken thereupon in the usual course of proceeding.

253 Sheriff indemnified for escape if warrant granted at request of Customs. Gaoler to receive offender.

Every sheriff, mayor, bailiff, under-sheriff, and other person granting such special warrant shall be indemnified from all liability for the escape of any person who shall be arrested by virtue of such warrant; but when any person so arrested shall be tendered to the gaoler or keeper of the proper prison, he is hereby required to receive every person so arrested and tended as aforesaid, and give a receipt for his body.

254 When offenders arrested give bail to the sheriff, bail bond to be assigned to Her Majesty.

If when any person is arrested by writ of *capias ad respondendum*, the sheriff or other officer shall take bail from such person, such sheriff or other officer, at the request and costs of the Solicitor of Customs or other proper officer, shall assign to Her Majesty, her heirs and successors, the bail bond taken from such person, by endorsing and attesting the same under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so endorsed be duly stamped before any suit be commenced thereupon, and if such bail bond be forfeited, such process shall thereupon issue as on bonds originally made to Her Majesty, her heirs and successors.

As to prosecution by indictment or information

255 In whose name indictments or suits to be preferred.

All indictments or suits for any offences or the recovery of any penalties or forfeitures under the Customs Acts, shall, except in the cases where summary jurisdiction is given to justices, be preferred or commenced in the name of Her Majesty's Attorney General for England or Ireland, or of the Lord Advocate of Scotland, or of some officer of Customs or Inland Revenue.

256 The Attorney-General or Lord Advocate may enter a nolle prosequi.

In any prosecution for recovery of any fine, penalty, or forfeiture incurred under the Customs Acts, Her Majesty's Attorney General for England, Her Majesty's Attorney General for Ireland, or the Lord Advocate of Scotland, if satisfied that such fine, penalty, or forfeiture was incurred without any intention of fraud, or that it may be inexpedient to proceed in the said prosecution, may enter a nolle prosequi or otherwise on such information.

257 Suits, &c. to be exhibited within three years.

All suits, indictments, or informations brought or exhibited for any offence against the Customs Acts in any court or before any justice, shall be brought or exhibited within three years next after the date of the offence committed.

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258 Indictments or informations may be tried in any county in England, Scotland, or Ireland respectively.

Any indictment, prosecution, or information which may be instituted or brought under the direction of the Commissioners of Customs for offences against the Customs Acts shall and may be inquired of, examined, tried, and determined in any county of England when the offence is committed in England, and in any county of Scotland when the offence is committed in Scotland, and in any county in Ireland when the offence is committed in Ireland, in such manner and form as if the offence had been committed in the said county where the said indictment or information shall be tried.

As to proofs in proceedings

259 Defendant's proof in smuggling cases.

If in any prosecution in respect of any goods seized for nonpayment of duties, or any other cause of forfeiture, or for the recovering any penalty or penalties under the Customs Acts, any dispute shall arise whether the duties of Customs have been paid in-respect of such goods, or whether the same have been lawfully imported or lawfully unshipped, or concerning the place from whence such goods were brought, then and in every such case the proof thereof shall be on the defendant in such prosecution, and where any such proceedings are had in the Exchequer Division. of the High Court of Justice on the Revenue Side, the defendant shall be competent and compellable to give evidence.

260 Averments in smuggling cases.

The averment that the Commissioners of Customs or Inland Revenue have directed or elected that any information or proceedings under the Customs Acts shall be instituted, or that any ship or boat is foreign or belonging wholly or in part to Her Majesty's subjects, or that any person detained or found on board any ship or boat liable to seizure is or is not a subject of Her Majesty, or that any goods thrown overboard, staved, or destroyed were so thrown overboard, staved, or destroyed to prevent seizure, or that any goods thrown overboard, staved, or destroyed during chase by any ship or boat in Her Majesty's service, or in the service of the Revenue, were so thrown overboard, staved, or destroyed to avoid seizure, or that any person is an officer of Customs or Excise, or that any person was employed for the prevention of smuggling, or that the offence was committed within the limits of any port, or where the offence is committed in any port of the United Kingdom, the naming of such port in any information or proceedings shall be deemed to be sufficient, unless the defendant in any such case shall prove to the contrary.

261 Vivâ voce evidence may be given that a party is an officer. Witness competent although entitled to part of seizure or reward.

If upon any trial a question shall arise whether any person is an officer of the army, navy, marines, or coastguard duly employed for the prevention of smuggling, or an officer of Customs or Excise, his own evidence thereof or other evidence of his having acted as such, shall be deemed sufficient, without production of his commission or deputation; and every such officer and any person acting in his aid or assistance shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty as aforesaid, notwithstanding such officer or other person may

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be entitled to the whole or any part of such seizure or penalty, or to any reward upon the conviction of the party charged in such suit or information.

262 What shall be evidence of order of Treasury or Commissioners of Customs or Inland Revenue.

Upon the trial of any issue, or upon any judicial hearing or investigation touching any seizure, penalty, or forfeiture, or other proceeding under the Customs Acts or any Act relating to the Excise, or incident thereto, where it may be necessary to give proof of any order issued by the Commissioners of the Treasury, or by the Commissioners of Customs or Inland Revenue respectively, the order, or any letter or instructions referring thereto, which shall have been officially received by any officer of Customs or Excise for his government, and under which he shall have acted as such officer, shall be admitted and taken as sufficient evidence and proof of such order.

263 Evidence of condemnation in forfeiture.

Condemnation by any justice under the Customs Laws may be proved in any court of justice, or before any competent tribunal, by the production of a certificate of such condemnation purporting to be signed by such justice, or an examined copy of the record of such condemnation certified by the clerk to such justice.

As to claim by owners of goods seized

264 Claim to be in name of bonâ fide owners. Verified by oath of ownership.

No claim or appearance shall be entered to any information filed or exhibited for the forfeiture of any ship or goods seized for any cause of forfeiture in any court or before any justice, unless such claim or appearance be made by or in the real name of the owner or proprietor thereof, describing his place of residence and occupation; and if such claimant shall reside at London, Edinburgh, or Dublin, or within the liberties thereof, oath shall be made by him before one of -the judges of the court in which such information is filed, or before any justice before whom such information shall be exhibited, that the said ship or goods were his property at the time of seizure; but if such person shall reside elsewhere, then oath shall be made by the attorney by whom such claim or appearance shall be entered that he has full authority for such claimant to make or enter the same, and that to the best of his knowledge and belief the same were at the time of seizure the bonâ fide property of the claimant; and on failure of making such proof of ownership such ship or goods shall be condemned, as if no claim or appearance had been made.

265 If goods owned by more than five co-proprietors two may make the oath.

When any such ship, goods, or other things shall at the time of the seizure thereof be the bonâ fide property of any number of proprietors exceeding five, it shall not be necessary for more than two of them to enter such claim or appearance on the part of themselves and their co-proprietors, or to make such oath as aforesaid.

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266 If goods owned by a company or co-partners, oath may be made by public officer or agent.

If any ship, goods, or other things shall at the time of seizure be the property of a joint stock company, or of co-partners carrying on trade in the United Kingdom, such claim and appearance may be entered and oath made by the public officer of such company, or by an agent for such co-partners or by one of them, and every person who shall be convicted of taking a false oath as to the facts herein-before required to be sworn to shall be guilty of perjury, and liable to the penalties thereof.

267 Probable cause may be certified in bar.

When in any information or suit relating to any seizure a verdict or judgment shall be found for the claimant, if it shall appear to the judge or justice before whom the same was heard that there was reasonable or probable cause of seizure, and such judge or justice shall so certify on the record or information, such certificate may be pleaded a bar to any action, indictment, or other proceeding against the seizer; and in case any action, indictment, or other proceeding shall be brought to trial against any person on account of any seizure (whether any information be brought to trial for the condemnation of the same or not), and a verdict shall be given for the plaintiff, if the judge or justice before whom such action, indictment, information, or other proceedings shall be tried or heard shall certify on the record, information, or other written proceedings that there was reasonable or probable cause for seizure, the plaintiff shall not be entitled to more than twopence damages nor to any costs, nor shall the defendant be fined more than one shilling; and the production of such certificate, or a copy thereof, verified by the signature of the officer of the court, shall be sufficient evidence of such certificate.

As to actions against officers of Customs

268 One month's notice of action to officer before process.

No action or suit shall be commenced against any officer of the army, navy, marines, coastguard, Customs, Excise, police, or other person acting for or under the direction of the Commissioners of Customs, or duly employed in the prevention of smuggling, for anything done in the execution of or by reason of his office, until one month next after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent of the plaintiff, in which notice shall be clearly stated the cause of action, the name and place of abode of the plaintiff, and the name and place of abode or business of, such attorney or agent, and the attorney or agent mentioned in such notice shall not be entitled to more than ten shillings for preparing and serving such notice; and if any action or suit shall be commenced against any such officer or other person, and no such notice shall have been given, such officer or other person may call upon the plaintiff to establish to the satisfaction of the court, on affidavits on both sides, that such action or suit is brought for some act, matter, or thing not done in the execution of or by reason of his office, or whilst on duty as such officer, and if the plaintiff shall fail so to satisfy the court, such action or suit shall discontinue: Provided always, that if the plaintiff shall so satisfy the court, he shall not be allowed on the trial of such action to give evidence of any cause of action other than such as shall have been disclosed in his said affidavit.

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269 Evidence limited to subject in notice.

Upon the trial of any action brought in pursuance of such notice the plaintiff shall not be entitled to a verdict without proving on the trial that such notice had been duly served, in default whereof the defendant shall receive a verdict, with costs, nor shall the plaintiff be at liberty to produce evidence of any cause of action, except such as has been distinctly stated in such notice.

270 Officer may tender amends.

It shall be lawful for any such officer or other such person to whom such notice shall be given, at any time within one month after service thereof, to tender amends to the plaintiff, or his agent or attorney, and in case such amends be not accepted to plead such tender in bar of the action, together with the plea of "not guilty," and other pleas, with leave of the court, where such leave must be obtained pursuant to "The Common Law Procedure Act, 1852;" and if upon the trial of such action the jury shall find the amends so tendered sufficient, they shall give a verdict for the defendant, and in such case, or in case the plaintiff shall be nonsuited or discontinue his action, or in case judgment be given for such defendant on demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to if he had. pleaded the general issue only ; but if upon issue joined the jury shall find that no amends were tendered, or that the same were insufficient, or shall find against the defendant on such plea or pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, together with costs of suit.

271 Officer omitting to tender amends may pay money into court.

In case any officer or other such person shall neglect to tender amends, or shall not have tendered sufficient amends, before the action brought, it shall be lawful for him, by leave of the court in which such action shall be brought, at any time before the trial of the action, to pay into court a sum of money by way of amends, to abide the usual practice in such cases.

272 Actions against officers to be brought within one month after cause arises.

Every action against any officer of Customs or other such person shall be commenced within one month after the cause of action shall have arisen; but if such action be brought in respect of any seizure made by such officer or other such person, the month shall be computed from the day of seizure, unless it shall within that time become the subject of an information for the condemnation thereof, in which case the cause of action shall not be deemed to have arisen until the day after the trial of such information, and the venue in such action shall be laid in the county or place where the cause thereof is alleged to have occurred; and the defendant may plead the general issue, and give the special matter in evidence on the trial thereof; and if the plaintiff shall be nonsuited or discontinue, or if upon a verdict or demurrer judgment shall be given against him, the defendant shall be entitled to costs, and have such remedy for the recovery thereof as any other defendant now has in other cases where costs are legally recoverable.

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273 Solicitors clerks and officers of Customs may conduct cases.

Any person appointed to be solicitor or assistant solicitor of Her Majesty's Customs, or any clerk duly appointed to act on his behalf or under his or their directions, shall and may in any case relating to the Customs, or under the direction of the Commissioners of Her Majesty's Treasury or Customs, act as counsel, solicitor, attorney-at-law, advocate, or writer to the signet in the prosecution, conduct, or defence of any such case in any court, jurisdiction, or place in which such case may be instituted, and any such solicitor, assistant solicitor, or clerk, and any officer of Customs, under the order and directions of the Commissioners of Customs, may prosecute, defend, or conduct any proceeding before any justice in any matter relating to the Customs to be heard or determined by him.

274 Defendants in Customs cases to have choice of attorney and counsel in Scotland.

Any writer to the signet, solicitor before the supreme courts in Scotland, or solicitor at law duly licensed to practise as an agent in the Courts of Session and Justiciary in Scotland, who shall be retained by any defendant at the suit of the Crown for any offence against the laws relating to the Customs, shall be competent to undertake the defence of such defendant, and to instruct counsel for that purpose; and any such defendant who may not have retained any such agent shall be entitled to be heard by his counsel on any trial for such offence, although such defendant may have previously appeared to answer such suit in person instead of appearing by agent.