



# 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.

*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.

#### **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.

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**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, 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.

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**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.