



# 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 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.

#### **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.

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**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.

**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.

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**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.