

PART XI
Legal Proceedings, Forfeiture and Sale of Goods

General Provisions as to Legal Proceedings

Institution of
proceedings.

Third Schedule.

119.(1) Subject to the provisions of subsection (3), and to the powers of the Director of Public Prosecutions under Section 65 of the Constitution, no proceedings for an offence under any customs enactment, or for condemnation under the Third Schedule, shall be commenced except –

- (a) by order of the Comptroller in writing; and
- (b) in the name of an officer.

(2) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced by virtue of subsection (1) (b) those proceedings may be continued by any officer authorised in that behalf by the Comptroller.

(3) Notwithstanding anything in the foregoing provisions of this section, where any person has been arrested for any offence for which he is liable to be arrested under any customs enactment any court before which he is brought may proceed to deal with the case although the proceedings have not been instituted by order of the Comptroller or have not been commenced in the name of an officer.

120. Save as otherwise expressly provided for in this Act and notwithstanding any other provision of any other enactment, proceedings for an offence under any customs enactment may be commenced at any time within, but shall not commence later than, five years from the date of the commission of the offence.

Time limit on
proceedings.

121. (1) Except as otherwise expressly provided all offences under this Act shall be prosecuted in a Magistrate's Court.

Place of trial.

(2) Proceedings for an offence under any customs enactment may be commenced –

- (a) in any court having jurisdiction in the place –
 - (i) where the offence was committed, or
 - (ii) where the person charged with the offence resides or is found, or
 - (iii) in the case of a body corporate charged with the offence, where that body corporate has its registered or principal office; and
- (b) if anything was detained or seized in connection with the offence, in any court having jurisdiction in the place where that thing was so detained or seized or was found or condemned as forfeited.

122. Any proceedings before a Magistrate's Court in relation to an assigned matter may be conducted by an officer or any other person authorised in that behalf by the Comptroller.

Persons who may
conduct proceedings.

123. (1) Any summons or other process issued for the purpose of any customs enactment shall be deemed to have been duly served on a person –

Service of process.

- (a) if delivered to him personally; or
- (b) if left at his last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- (c) if left on board any vessel or aircraft of which he is the owner.

(2) Any summons, notice, order or other document issued for the purposes of any proceeding under any customs enactment, or of an appeal from a decision of any court in any proceedings, may be served by an officer.

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Incidental provisions.

124.(1) Where liability for an offence under any customs enactment is incurred by two or more persons jointly, those persons shall each be liable for the full amount of any fine and may be proceeded against either jointly or severally as the Comptroller may think fit.

(2) Where an offence under a customs enactment, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of that body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) Where a penalty for an offence under a customs enactment is required to be fixed by reference to the value of any goods, that value shall be taken as the price those goods might reasonably be expected to have fetched, after payment of any duty chargeable on them, if they had been sold in the open market at or about the date of the commission of the offence for which the penalty is imposed.

(4) Where, in any proceedings for an offence under a customs enactment, any question arises as to the duty or rate chargeable on any imported or exported goods, or goods which were intended to be exported, and it is not possible to ascertain the relevant time specified in section 65 the duty or rate shall be determined as if the goods had been imported, exported or brought to a place for exportation at the time when the proceedings were commenced.

Third Schedule.

(5) In any proceedings for an offence under a customs enactment, or for condemnation under the Third Schedule, the fact that security had been given for payment of any duty or compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are instituted, shall not be a defence.

Power to compound offences and mitigate penalties.

125.(1) Subject to the powers of the Director of Public Prosecutions under Section 65 of the Constitution the Comptroller may, as he thinks fit –

- (a) compound any offence; or
- (b) stay the proceedings for condemnation of anything as being forfeited under this Act; or
- (c) restore subject to such conditions, if any, anything seized under this Act.

(2) In any proceedings for an offence under this Act any court by whom the matter is considered may mitigate any pecuniary fines as it sees fit.

Proof of certain documents.

126.(1) Any document purporting to be signed by the Secretary to the Cabinet, the Minister, the Comptroller, or by their order, or by any person

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with their authority, shall, until the contrary is proved, be deemed to have been so signed, and the matter contained in that document may, in any proceedings under any customs enactment, be proved by the production of that document or any document purporting to be a copy of that document.

(2) Where any book or other document is required to be kept by virtue of a customs enactment, the production of that book or other document, or a copy of it certified as a true copy by an officer, shall in any proceedings under such an enactment be sufficient evidence of the matters contained therein unless the contrary be proved.

127.(1) An averment is any process in proceedings under a customs enactment –

- (a) that those proceedings were instituted by order of the Comptroller;
- (b) that any person is or was the Minister, the Comptroller, an officer or a police officer;
- (c) that any person is or was appointed or authorised by the Comptroller to discharge, or was engaged by the order or with the concurrence of the Comptroller in the discharge of, any duty;
- (d) that the Comptroller is or is not satisfied as to any matter as to which is required by any customs enactment to be satisfied;
- (e) that any place is within the limits of a customs port, approved wharf, customs airport or other customs area, or within the territorial sea;
- (f) that any goods thrown overboard, stowed or destroyed were so dealt with in order to prevent or avoid their seizure; or
- (g) that a ship is a Saint Christopher and Nevis Ship; shall, until the contrary is proved, be sufficient evidence of the matter in question.

(2) Where in any proceedings relating to an assigned matter instituted by the Comptroller, an officer or a police officer or against the Comptroller, any question arises as to the place from which goods have been brought or as to whether or not –

- (a) any duty has been paid or secured in respect of any goods;
- (b) any goods or other thing are of the description or nature alleged in the information, writ or other process;
- (c) any goods have been lawfully imported or lawfully unloaded from any vessel or aircraft;

Proof of certain matters other than documents.

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- (d) any goods have been lawfully loaded into any vessel or aircraft or lawfully exported or were lawfully waterborne;
- (e) any goods were lawfully brought to any place for the purpose of being loaded into any vessel or aircraft, or exported; or
- (f) any goods are or were subject to any prohibition or restriction on their importation, exportation or carriage coastwise,

the burden of proof shall be upon the other party to the proceedings.

Detention, of persons about to leave Saint Christopher and Nevis.

128. Where any person has by any action rendered himself liable to be prosecuted for any offence under any customs enactment, and the Comptroller is of the opinion that that person is about to leave Saint Christopher and Nevis without that matter being dealt with, the Comptroller may apply to a Magistrate for a warrant for the arrest of that person.

Actions against officers.

129. No action, suit or other proceedings shall be brought or instituted personally against any officer in respect of any act done by him in pursuance of any power granted to or duty imposed on him by a customs enactment.

Forfeiture

Detention, seizure and condemnation of goods.

130. (1) Anything which is liable to forfeiture under any customs enactment may be seized or detained by any officer or police officer.

(2) Where anything which is liable to forfeiture is seized or detained by a police officer, that thing shall be delivered to the Comptroller within seven days unless –

- (a) such delivery is not practicable; or
- (b) that thing is or may be required for use in connection with any proceedings to be brought otherwise than under a customs enactment.

(3) Where, by virtue of subsection (2), anything seized or detained by a police officer is not delivered up to the Comptroller within seven days, notice in writing of the seizure or detention, containing full details of the thing seized or detained, shall be given to the Comptroller, and any officer shall be permitted to examine and take account of that thing at any time while it remains in the custody of the police.

Third Schedule

(4) The Third Schedule shall have effect in relation to appeals against the seizure of anything seized as liable to forfeiture under any customs enactment, and for proceedings for the condemnation as forfeited of that thing.

(5) Notwithstanding that anything seized as liable to forfeiture has not been condemned as forfeited, or deemed to have been condemned as forfeited, the Comptroller may at any time if he sees fit –

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- (a) deliver it up to any claimant upon the claimant paying to the Comptroller such sum as the Comptroller thinks proper, being a sum not exceeding that which in the Comptroller's opinion represents the value of the thing, including any duty chargeable thereon which has not been paid; or
- (b) if the thing seized is a living creature or is in the Comptroller's opinion of a perishable nature, sell or destroy it.

(6) The restoration, sale or destruction under subsection (5) of anything seized as liable to forfeiture shall be without prejudice to any right of appeal against its seizure.

131. (1) Where anything has become liable to forfeiture under any customs enactment –

- (a) any vessel, aircraft, vehicle, animal, container (including baggage) or any other thing which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at the time when it was so liable or for the purposes of the commission of the offence for which it later became so liable; and
- (b) any other thing mixed, packed or found with the thing so liable,

shall also be liable to forfeiture.

(2) Where –

- (a) any vessel is or has been within the territorial sea; or
- (b) any aircraft is or has been at any place whether on land or water in Saint Christopher and Nevis; or
- (c) any vehicle is or has been within the limits of any customs port, approved wharf, customs airport or other customs area,

while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods, that vessel, aircraft or vehicle shall be liable to forfeiture.

(3) If, at any time while a vessel is within the territorial sea, any part of its cargo is thrown overboard or is stowed or destroyed to prevent seizure, that vessel shall be liable to forfeiture.

(4) Where any cargo, has been imported into Saint Christopher and Nevis upon any vessel or aircraft and any part of that cargo is afterwards found to be missing then, if the master of the vessel or the commander of the aircraft is unable to account for that missing cargo to the satisfaction of the Comptroller, that vessel or aircraft shall be liable to forfeiture.

Forfeiture of vessels etc., used in connection with goods liable to forfeiture.

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(5) Where any vessel, aircraft, vehicle or animal has become liable to forfeiture, all tackle, apparel or furniture belonging to it shall also be liable to forfeiture.

Special provisions
as to forfeiture
of larger
vessels.

132. (1) Notwithstanding any other provision of any customs enactment, no vessel of two hundred and fifty or more tons burden shall be liable to forfeiture unless –

- (a) the offence in respect of or in connection with which the forfeiture is claimed –
 - (i) was substantially the object of the voyage during which the offence was committed, or
 - (ii) was committed while the vessel was under chase after refusing to stop when required to do so;
- (b) the vessel was constructed, adapted, altered or fitted in any manner solely for the purpose of concealing goods; or
- (c) subsection (3) applies.

(2) Where any vessel of two hundred and fifty or more tons burden would, but for subsection (1), be liable to forfeiture for or in connection with an offence under any customs enactment and, in the opinion of the Comptroller, a responsible officer of the vessel is implicated by his own act or by neglect in that offence, the Comptroller shall have the power to impose a penalty on that vessel in any sum not exceeding five thousand dollars or treble the value of the goods liable to forfeiture and until that penalty is paid, he may withhold clearance of that vessel.

Third Schedule.

(3) Where any vessel is liable to a penalty under subsection (2), but the Comptroller is not satisfied that such a penalty is adequate in relation to the offence committed, the Comptroller may take proceedings under the Third Schedule for the condemnation as forfeited of that vessel in any sum not exceeding ten thousand dollars or treble the value of the goods liable to be condemned, as the court may think fit.

(4) Where condemnation proceedings are taken under subsection (3), the Comptroller may require such sum as he sees fit, not exceeding ten thousand dollars or treble the value of the goods condemned to be deposited with him to await his final decision or, as the case may be, the decision of the court, and until that sum is deposited, he may withhold clearance of that vessel.

(5) No claim shall lie against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(6) The exemption from forfeiture of any vessel under this section shall not affect the liability to forfeiture of any goods carried on board.

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(7) For the purposes of this section –

- (a) "responsible officer", in relation to any vessel, means the master, mate or engineer of the vessel, and in the case of a vessel carrying a passenger certificate, the purser or chief steward, and, in the case of a vessel manned wholly or partly by Asiatic seamen, the serang or other leading Asiatic officer of the vessel; and
- (b) without prejudice to any other grounds upon which a responsible officer of any vessel may be held to be implicated by neglect, he may be so liable if goods not owned by any member of the crew are discovered in any place under that officer's supervision in which they could not reasonably have been put if he had exercised proper care at the time of the loading of the vessel or subsequently.

133. (1) Where, in any proceedings for the condemnation of anything seized as liable to forfeiture under any customs enactment, judgment is given for the claimant, the court may, if it sees fit, certify that there were reasonable grounds for the seizure.

Protection of
officers seizing or
detaining goods.

(2) Where any proceedings are brought against the Government or the Comptroller on account of the seizure or detention of anything as liable to forfeiture and judgment is given for the plaintiff or prosecutor, then if either –

- (a) a certificate relating to the seizure has been granted under subsection (1); or
- (b) the court is satisfied that there were reasonable grounds for seizing or detaining that thing,

the plaintiff or prosecutor shall not be entitled to recover any damages or costs.

(3) Nothing in subsection (2) shall affect any right of any person for the return of the thing seized or detained or to compensation in respect of any damage to the thing or in respect of the destruction of it.

(4) Any certificate under subsection (1) may be proved by the production of either the original certificate or a certified copy of it, purporting to be signed by an officer of the court by which it was granted.

134. (1) Anything condemned as forfeited by virtue of the Third Schedule, or deemed to have been condemned as forfeited by that Schedule, shall, unless a prohibited or restricted article, be sold by public action.

Sale of goods
condemned as
forfeited.
Third Schedule.

(2) Any auction under this section shall be advertised in the *Gazette* and in a newspaper in circulation in Saint Christopher and Nevis, not less than seven days before it is due to take place.

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(3) The Comptroller shall appoint a person, who may be an officer, to act as auctioneer at an auction under this section.

(4) None of the following persons shall be permitted to bid for anything at an auction under this section –

- (a) an officer;
- (b) any person having or having had any interest in the thing being auctioned,

and any person who makes a bid in contravention of this subsection shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

(5) All monies arising from the sale of any thing at auction under this section shall be used to pay –

- (a) firstly, any duty payable on that thing;
- (b) secondly, all the charges of and incidental to the sale, warehousing and carriage of that thing; and
- (c) lastly, all the charges of and incidental to the seizure of that thing and any proceedings for the condemnation of the thing, and

any residue shall be paid by the Comptroller into the Consolidated Fund, subject to such disposition to or among the person making or aiding in, or in any manner contributing towards the seizure as the Comptroller may direct.

(6) Any thing not sold at an auction under this section, and all prohibited or restricted goods condemned or deemed to be condemned as forfeited shall be destroyed or otherwise disposed of as the Comptroller may direct.

(7) Nothing in this section shall prevent the Comptroller from authorizing the withholding from sale of any thing condemned or deemed to be condemned as forfeited, and its use by an officer, where such retention and use would assist that officer in the performance of his duty.

135.(1) Where any thing not being a thing condemned or deemed to be condemned as forfeited, may by virtue of any customs enactment be sold, it shall, unless it is of a perishable nature, be offered for sale at a public auction.

(2) Any auction under this section shall be advertised in the *Gazette* and in a newspaper circulated in Saint Christopher and Nevis, not less than seven days before it is due to take place.

(3) The Comptroller shall appoint a person, who may be an officer, to act as auctioneer at any auction under this section.

(4) All monies arising from the sale of any thing at an auction under this section shall be used to pay –

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- (a) firstly, any duty payable on that thing; and
- (b) secondly, all the charges of and incidental to the sale, warehousing and carriage of that thing,

and the residue shall, if application is made within six months of the sale, be paid over to any person who satisfies the Comptroller that he was the owner of that thing at the time of its sale.

(5) The Comptroller shall offer for sale anything which is of a perishable nature in the manner which appears to him, bearing in mind its nature, most likely to realize the largest sum.

(6) Anything which cannot be sold at any auction under this section or by the Comptroller under subsection (5) shall be destroyed or otherwise disposed of as the Comptroller may direct.

(7) The provisions of this section shall apply to the sale of any vessel or aircraft which may be sold by virtue of section 134 except that the sum ordered to be paid by that section shall be satisfied out of the monies arising from the sale before any amount is repaid to the person who was the owner of the vessel or aircraft.

(8) Any sale by auction under this section may take place at the same time and place as a sale under section 134.