



# Factories Act 1961

## 1961 CHAPTER 34

### PART XII

#### OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

#### **161 Power of person primarily liable to exempt himself from liability**

- (1) In England and Wales, a person charged with an offence under this Act shall be entitled, upon information duly laid by him and on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person whom he charges as the actual offender brought before the court at the time appointed for the hearing of the charge ; and if, after the commission of the offence has been proved, the first-mentioned person proves to the satisfaction of the court—
  - (a) that he has used all due diligence to enforce the execution of this Act and of any relevant order or regulation made thereunder; and
  - (b) that the said other person had committed the offence in question without his consent, connivance, or wilful default;that other person shall be summarily convicted of the offence, and the first-mentioned person shall not be guilty of the offence, and the person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.
- (2) The prosecution shall have the right in any such case to cross-examine the first-mentioned person if he gives evidence and any witnesses called by him in support of his charge, and to call rebutting evidence.
- (3) In Scotland, a person charged with an offence under this Act who proves to the satisfaction of the court that he has used all due diligence to enforce the execution of this Act and of any relevant order or regulation made thereunder and that the offence was due to the act or default of some other person who committed it without his consent, connivance or wilful default, shall be acquitted of the offence.
- (4) When it is made to appear to the satisfaction of an inspector at the time of discovering an offence—

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*Status: This is the original version (as it was originally enacted).*

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- (a) that the person who would be proceeded against apart from this subsection has used all due diligence to enforce the execution of this Act; and
  - (b) by what person the offence has been committed; and
  - (c) that it has been committed without the consent, connivance or wilful default of the first-mentioned person and in contravention of his orders,
- the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the first-mentioned person.