

The remaining portion of sec. 71 remains to be noticed, *i.e.*, that a suit cognizable in a Division Court may be entered and tried in the court holden for the division,

**B. (2)** In which the defendants, or any one of the defendants, *carries on business* at the time the action is brought.

The term "business" includes any profession, trade, or calling, carried on for the sake of profit. It must, however, be as a calling, and not as an accidental occupation. The amount of business done is immaterial, provided there exists the intention of making such business a person's general occupation. Thus, under the Bankruptcy Act, it has been holden that the chief criterion whether a man be a trader or not is, what was his *intention* in buying and selling; and the *quantum* of trading has been held immaterial, provided it be the man's common and ordinary mode of dealing. (*Patman v. Vaughan*, 1 T. R. 572; *Ex parte Cromwell*, 1 M. D. & D. 158; *Holroyd v. Gwynne*, 2 Taunt. 176; *Ex parte Blackmore*, 6 Ves. 3.)

To constitute the carrying on business it would seem that it is necessary there should be a repeated practice of so doing, or a commencement coupled with an intention to continue it, for a single act or transaction, though otherwise of the nature required, would not be sufficient. (See the cases *Arch. Banky*. 10th, ed. 52.) The declaration of a party as to the object of his doing any particular act, as buying or selling, or holding himself out as carrying on a business, is admissible of his intention in so doing. But although decisions on the bankruptcy law may throw much light on this enactment, it is to be borne in mind that to create a "trading" within the bankrupt law, the party must have bought and sold goods again. But a man may *carry on business* without doing so: in other words, a "trading" implies buying to sell again; the terms "carrying on business" do not necessarily do so.

In order to constitute a carrying on a business, it is not necessary that the party should be doing so legally: thus, an individual who carries on a trade of smuggling, or a person engaged in trading, although specially forbidden to trade by statute, may be a bankrupt as a trader. (*Ex parte Meymott*, 1 Atk. 196; *Cobb v. Symonds*, 3 M. D. & D. 125.) Nor is it necessary that the party should

keep an office or open shop, or conduct his business in the ordinary way. (*Ex parte Wilson*, 1 Atk. 218.) It would appear that the business must be on the defendant's own account, and not as the servant of another. And a clerk in the Privy Council office, it was held, was not a person carrying on a business within the meaning of sec. 128 of the English County Courts Act.

## MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

### NOTES OF NEW DECISIONS AND LEADING CASES.

**DRIVING CATTLE OR CONVEYING IN VAN.**—By the Islington Parish Act, 1857, it is forbidden to conduct or drive cattle upon any street, road, or pathway within the parish of Islington between the hours of twelve on Saturday night and twelve on Sunday night.

*Held*, that the words "conduct or drive" did not apply to the conveyance of cattle in a van.—*Triggs v. Lester*, 14 W. R. 279.

**RECEIVING STOLEN GOODS.—POSSESSION BY OWNER AFTER THE THEFT.**—Goods which have been stolen lose the character of "stolen goods" if, after the theft, the possession and control of them is obtained by the true owner.

Some thieves having stolen a passengers' luggage from a railway station, one of them took it to another station of the same company, and forwarded it by train addressed to the prisoner at Brighton. Soon after it had reached the Brighton station, a policeman opened the parcel, and finding that it contained the stolen property, tied it up, and directed the company's porter, in whose charge it was, not to part with it, and on the day following told him to take it to the place where it was addressed and where it was received from him by the prisoner. In an indictment for receiving, the property was laid in the railway company and the prisoner was convicted.

*Held*, by a majority of the court (Erle, C. J., and Mellor, J., *dissentientibus*) that the conviction was wrong.—*Reg. v. Schmidt*, 14 W. R. 236.

**MISDEMEANOUR.—REFUSING TO AID CONSTABLES.—ASSAULT TO PREVENT APPREHENSION.—INDICTMENT.**—An indictment for refusing to aid certain constables in the execution of their duty, alleged that before committing the offence, to wit, on the 25th May, 1865, T. B. and J. B. were in the custody of certain constables upon a charge of felony; that they assaulted the constables with intent to resist their lawful apprehension