officer," do produce, etc.—following the practice in force before the Judicature Acts.

The Court of Appeal, *held*, that the practice obtaining before the Judicature Acts ought not to be disturbed.

BRETT, L. J.—Long before the Jud. Acts, the peculiarity of insurance business had given rise to a practice, both in Chancery and at common law, of granting discovery to a larger extent than in ordinary business. The reasons for this are not far to seek. The underwriters have no means to know how a loss was caused; it occurs abroad and when the ship is entirely under the control of the assured. In addition to this the contract of insurance is made, in peculiar terms, on behalf of the assured himself and all persons interested, and who these persons are, especially at the time of the loss, is entirely unknown to the under writers. The question, therefore, arose whether this practice had been altered, and it was held in *West of England and S. Wales District Bank* v. *Canton Ins. Co.* L. R. 2 Ex. D. 472, for the reasons there given that it had not.

[NOTE—*The Imp. and Ont. orders are virtually identical.*]

EX PARTE YOUNG—RE YOUNG.

Imp. O. 9, r. 6; O. 16, r. 10; O. 42, r. 8—Ont. O. No. 40; O. No. 100; O. No. 346.

Action against firm—Service—Debtor's summons—Judgment by default.

After the dissolution of a firm, duly advertised, W. issued a writ against the firm in the firm name, on December 18th, 1880. On December 21st the writ was personally served on one of the continuing partners at the firm's place of business. Y., one of the partners, who had retired shortly before the dissolution, was not served. No appearance was entered for any of the partners; and on December 29th., W. signed judgment for default. In June, 1881, W. took out a debtor's summons, under the Bankruptcy Act, 1869, founded on the said judgment and served Y. Y. applied to the Court to dismiss the summons, and his application was refused.

Held, by Court of Appeal, [diss. Brett, L. J.] that the summons should have been dismissed.

[Nov. 28, C. of A.—45 L. T. N. S. 493.

The above head-note sufficiently shows the facts. It was not shown that the debtor, personally, knew anything about the action until May 11th, 1881. The debt alleged was stated as due upon the judgment obtained by the creditor on Dec. 29th, 1880, not against the person served with the summons, but against a firm sued by the firm name.

SELBORNE, L. C., after expressing doubts as to whether it was correct to say that Imp. O. 16, r. 10, O. 12, r. 12 (Ont. O. Nos. 100. 57) assumed the existence at the time of action brought, of a subsisting partnership carried on under the firm named in the writ, for that the argument did not convince him "that the effect of a dissolution of a partnership, is to put an end to the partnership relation between the members of the dissolved firm, as to their joint liabilities and assets; or as to transactions in dependence at the date of the dissolution; or that the name of the firm under which their business had been carried on, may not, according to that mercantile usage of which the law does and ought to take notice, still continue to be applicable for any purposes for which the partnership relation may properly be said to continue,"—went on to say that the determination of the appeal did not depend upon these rules only; and that he had come to the conclusion that the summons should be dismissed for the following reasons:—

"The appellant, not having been named as a defendant to the action there is against him, *nominatim*, no judgment at present on record; and, as the whole proceeding under O. 16, r. 10 (Ont. O. No. 100) is new and statutory, it appears to me that a judgment against a firm cannot be sufficient to constitute a debt capable of supporting a petition in bankruptcy, against an individual person not named on the record in any other way than that which is either prescribed by, or can be shown necessarily to result from the provisions of the statute. The Rules of the Supreme Court on this subject, are part of the schedule to the Jud. Act, 1875. The same rules have, in O. 42, r. 8 (Ont. O. 346) expressly provided for this very case, in a manner which appears to me to show that judgment against a firm is not, and ought not to be held conclusive of the liability of any person who has neither admitted on the pleadings that he is, nor has been adjudged to be a partner in the firm sued, and who has not been served as a partner with the writ of summons."

COTTON, L. J., agreed with the Lord Chancellor. In the course of his judgment he observes:—

"By English law, previously to the rules made