the conclusion arrived at by the Court below. But it is said that the plaintiff had been *injuriée par son mari dans son caractère comme femme et comme mère.* These are very *galant* words, but they only express *en résumé* the facts I have detailed.

The principles which should guide Courts in pronouncing a sentence of *séparation de corps* are well put by Massol, p. 14.

I need hardly recall to mind the doctrine of "the antique world" as expressed by Pothier, for it is familiar to every lawyer. But even in those happy lands where the admirable institution of divorce subsists, and which are not yet thoroughly demoralized by it, the writers lay down very strict rules as being those on which only it should be granted. Daubanton, 397. I would therefore reverse.

Judgment confirmed.

C. L. Champagne for appellant.

Loranger, Loranger & Beaudin for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, January 19, 1882.

DORION, C. J., RAMSAY, TESSIER, CROSS & BABY, JJ.

BOWEN et al. (d..s. below), Appellants, and GORDON et al. (plffs. below), Respondents.

Procedure—Guarantee—Option.

A dilatory exception was filed, asking for security for costs. Security was given by the plaintiff, bnt no judgment was rendered on the exception. Held, that this omission not causing any injustice to the plaintiff, who did not complain in due time, was not ground for an appeal.

An undertaking to give a purchaser an introduction to a firm whose responsibility and standing should be satisfactory to him, meant satisfactory at that date, and did not imply in any way the continued solvency of the firm.

Where a commission was payable in cash or bonds at the option of the debtor, part payment in cash was making an option, and gave the creditor the right to demand the balance in cash.

The appeal was from a judgment of the Superior Court, at Sherbrooke, Doherty, J., maintaining the respondents' action for commission on the price of 4,000 tons steel rails.

The respondents were a firm of brokers in London, England, and the appellants were the general contractors of the Quebec Central Railway. In 1877, E. C. Bowen, one of the appellants, being in England endeavoring to purchase rails and fastenings for the Railway, applied to respondents to introduce him to a firm who would undertake to sell and deliver 5,000 tons of steel rails, etc., on terms settled by Bowen, and he gave them a letter agreeing to pay 2½ per cent. commission on the invoice amount in consideration of their introducing to him within two days a firm whose responsibility and standing were satisfactory to him. The commission was payable, at Bowen's option, either in cash or in the first mortgage bonds of the Quebec Central Railway at 50 per cent. of their nominal value. The respondents, under this agreement, introduced Bowen to the Railway Steel & Plant Company, of Manchester, from which he purchased to the extent of 4,000 tons. The action was brought to recover a balance of commission.

RAMSAY, J. Two questions arise on this appeal—one of a purely technical character. The respondents, plaintiffs in the Court below, live in England, and a dilatory plea was put in to suspend the action until plaintiffs should give security and file a power of attorney. It is difficult to see any very good reason for asking for the production of the attorney's power in a case like this. It is not a very gracious thing to do, for it presumes about the highest offence of which an attorney can be guilty, or at least gross indiscretion, and in this case it must have been abundantly plain to the appellants that the attornies had instructions. The pretention is, therefore, not very favorable, though, strictly speaking, I think appellants had a right to be notified of the production of the power, and also that, according to the rules of procedure, the dilatory exception should have been disposed of in some way. But there is another rule equally clear, that where defects of practice that do not affect the substantial rights of parties are passed over, it is deemed to be by consent. Now, what do we find here? The dilatory plea is filed, it produces its effect, appellants plead to the merits, and go to proof. This brings up the whole issues; so the most that can be said is that the Court below has failed to adjudicate on a preliminary plea which ought to have been dismissed, with or without costs, in the discretion of the Court. Appellants' grievance, therefore, is confined to