

moi, que le précédent de la Cour suprême dans la cause de *Magnan v. Auger* ne s'applique pas, que toute la cause d'action n'a pas pris naissance dans le district de St-François et qu'en conséquence le défendeur devait être poursuivi dans la juridiction de son domicile.

L'exception déclinatoire aurait donc dû être maintenue: je suis d'opinion de la maintenir et d'ordonner que le doissier soit renvoyé dans le district de Roberval avec dépens, tant en Cour supérieure qu'en appel, contre l'intimé.

*Mr. Justice Martin.*—In the view that I take of the case it is doubtful if any firm contract of sale was ever concluded by these messages. It is to be observed that in the first letter respondent asked for a specification of the quality of the potatoes. The appellant's reply made no mention of quality, and in the absence of such mention merchantable quality would be implied.

The respondent in his message stipulated for potatoes "*belles et première qualité*" and the appellant in his telegram of the 26th of September says "*patates mêlées*."

It is alleged in respondent's factum that the new condition as to quality in this last message was accepted by the respondent, by his letter of the 26th of September, written and sent from D'Iraeli, but from a perusal of that letter it clearly appears that the respondent only confirms the terms of his telegram to appellant of the 25th of September and expressly requires potatoes "*belles et première qualité*". No mention whatever is made of appellant's telegram of the 26th of September offering "*patates mêlées*."

Appellant shipped a car of potatoes with draft attached to bill of lading. Respondent paid the draft and took possession of the potatoes and alleges they were not