doing within the said delay that the respondents be condemned to pay to the appellant the amount of the judgment.

This judgment, (the respondents residing in Scotland and having no domicile in Canada) was served at the Prothonotary's office and on the respondents' attorneys. After the delay of forty days, no choice or option having been made the appellant caused a writ of *fi. fa. de terris* to issue against the respondents for the full amount of the judgment. The sheriff first seized the property hypothecated, sold it and handed over the proceeds to a prior mortgagee. Another writ of *fi. fa. de terris* was then issued and other realty belonging to the respondents was seized. To this second seizure the respondents filed an opposition *afin d'annuler*, claiming that the judgment had not been served on them and that they were not personally liable for the debt due to appellant.

Held, 1st. Reversing the judgment of the Court below, that it is not necessary to serve a judgment *en déclaration d'hypothèque* on a defendant who is absent from the Province and has no domicile therein. Art. 476 C.P.C. and Cons. Stats. L. C. ch. 49, sec. 15.

2nd. That the respondents by not opposing the first seizure of their property, had waived any irregularity (if any) as to the service of the judgment.

3rd. That in an action *en déclaration d'hypothèque* the defendant, in default of his surrendering within the period fixed by the Court, may be personally condemned to pay the full amount of the plaintiff's claim. Art. 2075 C. C.

Appeal allowed with costs.

Blanchet, Q.C., for appellant.

Irvine, Q.C., for respondents.

Quebec.]

THE UNION BANK OF LOWER CANADA v. THE HOCHELAGA BANK.

Hypothec to the prejudice of creditors—When invalid—Art. 2023, C.C.

Where an hypothec has been acquired upon property within thirty days immediately preceding the declaration and admission of the mortgagee's agent, that the mortgagors were notoriously insolvent and *en déconfiture*, such hypothec, in a report of distribution of the moneys realized on the property of the insolvents, cannot be invoked to the prejudice of a party who was a creditor at the time when the hypothec was given. Art. 2023 C. C.

Appeal dismissed with costs.

Irvine, Q.C., for appellants.

Béique, for respondents.

Quebec.]

G. DEMERS v. N. DUHAIME.

Action en restitution de deniers—Sale of personal rights without warranty—Sale en bloc—Arts. 1510, 1517, 1518 C.C.

N.D., respondent, owner of a cheese factory, made an agreement with farmers by which the latter agreed to give the milk of their cows to no other cheese factory than to that of N.D. N.D. subsequently sold to G.D. (the appellant) the factory and, *sous la simple garantie de ses faits et promesses*, whatever rights he might have under his agreement with the farmers for the bulk sum of $7,000.

Then G. D. assigned to B. the factory and the same rights, but excluding warranty, *sans garantie aucune*, for $7,500.

A company was subsequently formed to whom B. assigned the factory and the rights, and one of the farmers to the original agreement having sold milk to another cheese factory, the company sued him, but the action was dismissed on the ground that N. D. could not validly assign personal rights he had against the farmers.

Thereupon G. D. brought an action against N. D. to recover the price paid by him for rights, which he had no right to assign. At the trial it was proved that although the price mentioned in the deed and paid was a bulk sum for the factory and the rights, the parties at the time valued the rights under the agreement with the farmers at $5,000. G. D. also admitted that the action was taken for the benefit of the present owners of the factory.

Held, affirming the judgment of the Court below, Strong and Fournier, JJ., dissenting, that, inasmuch as the appellant, by the sale he had made to B., had received full benefit of all that he had bought from respondent and had no interest in the suit, he could not claim to be reimbursed a portion of the price paid.