

and confessed the action, and final judgment was entered against him, on which some payments were made. In 1899 plaintiff commenced proceedings against the defendant G., who, under an agreement reserving his rights appeared and pleaded.

*Held*, reversing the judgment of the County Court Judge for District No. 6, that the judgment entered on confession against the defendant N. was an answer to the claim subsequently made against the defendant G. *McLeod v. Power* (1898) 2 Ch. 295, followed.

*Held*, further, that the action having been brought against defendants as joint debtors only, the position of G. in this suit was not affected by the fact that the note in question was a joint and several one, and that plaintiff in another suit might have some claim against G. alone.

Per MEAGHER, J., dissenting. As the reception of the note was not objected to on the trial, or the existence of the judgment against N. urged as an answer, a stage had been reached when the form of action was not material.

*Held*, also, that as either objection, if raised upon the trial, could have been cured by amendment, the facts should be looked at rather than the form, and the defendant G. should not be permitted to succeed on a mere technicality.

Per TOWNSHEND, J., concurring. G. could not succeed without an amendment and no amendment should be permitted after the lapse of fifteen years.

*R. L. Borden, Q.C., and J. A. Chisholm, for appellant. W. F. O'Connor, for respondent.*

Full Court.]

MCKENZIE v. ROSS.

[March 17.

*Action to have property in name of defendant declared vested in plaintiffs as assignees of party advancing purchase money—Proof that money was mere advance and that defendant acted independently—Doctrine of resulting trust held inapplicable—Case withdrawn from jury—Waiver.*

Plaintiffs as assignees of M. sought to obtain a declaration that certain lands held in the name of defendant were at the time of the assignment the property of M. and by reason of the assignment, became vested in the plaintiffs.

The evidence shewed that the money required by defendant for the purchase of the properties in question was obtained from M., but that M. had nothing to do with any of the purchases except to advance the money to defendant by whom the negotiations were conducted, and in whose name the deeds were taken and recorded, and who in all cases acted independently of M. in negotiating for and acquiring the properties from the respective owners.

*Held*, 1. The doctrine of resulting trusts was not applicable, and there being no issue of fact for the jury on this phase of the case the trial judge was justified in withdrawing it from them.