

evidence, when informed that it did not, and that that fence was not upon the dividing line between the east and west halves of the 50-acre lot, he acquiesced, and that, while he continued to be the owner of the east half, the strip in question was treated and dealt with and acknowledged by him to be the property of the plaintiff.

Statements by persons in possession of property qualifying or affecting their title are receivable against a party claiming through them by title subsequent to the admission: Phipson on Evidence, 5th ed., p. 224; and, for the same reason, the acts and conduct of a predecessor in title inconsistent with the existence in him of a right or title which a person who derives title from him is asserting, are receivable; and the acts and conduct of the third party in this case were receivable in evidence against the appellant; and they, at all events when taken in connection with the existence of the easterly fence and the recognition of that fence as being the line fence on that side of the lot, displaced the presumption of ownership arising from the appellant's possession, and entitled the plaintiff to succeed.

The Chief Justice agreed with the County Court Judge's disposition of the claim against the third party.

MACLAREN, J.A., and RIDDELL, J., concurred.

MAGEE, J.A., also concurred, for reasons stated in writing.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

MARCH 21ST, 1916.

*HARRISON v. MATHIESON.

Trusts and Trustees—Husband and Wife—Breaches of Trust by Husband—Knowledge and Benefit of Wife—Liability of Wife to Repay Moneys Misapplied—Volunteer—Account—Interest—Annual Rests.

Appeal by the defendant Mary Mathieson from the order of LENNOX, J., 9 O.W.N. 170, varying the report of a County Court Judge upon a reference. There was also a cross-appeal by the plaintiff, which was dismissed at the argument.

Both the appellant and the plaintiff appealed from the report, and by the order now in appeal the appeal of the plaintiff was allowed as to certain items of his claim and dismissed as to other items, and the appeal of the present appellant was dismissed.