

the other's equitable interests in the land. (*Per* Beck, Simmons and Walsh, JJ.)

*McKillop v. Alexander*, 1 D.L.R. 586, 45 Can. S.C.R. 551, and *Sydie v. Sesk. and Battle R.L. & D. Co.*, 14 D.L.R. 51, considered; and see Annotation at end of this case.

2. *Vendor and purchaser—Payment of purchase money—Recovery of—Failure of title.*

Where one of two vendees, both of whom claim the same land under unregistered contracts of sale from the same common source, is entitled to priority by reason of first filing a caveat in the land titles office, the other may recover from his vendee all payments made by him under the contract, with interest, together with the costs of investigating the title, or incident thereto. (*Per* Beck and Simmons, JJ.)

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ANNOTATION ON ABOVE SUBJECT.

The general question as to what constitutes a "caveatable interest" and who is entitled to file a caveat is considered in an annotation to *Re Moosekana Subdivision and Grand Trunk Pacific Branch Lines*, 7 D.L.R. 674, 675.

In this note the question considered is what priority is acquired by the filing of a caveat.

By filing a caveat in the land titles office one who acquires a right in land under an unregistered agreement of sale, will have priority over a person claiming under a prior agreement, of which the caveator did not have notice when acquiring his interests in the land: *Brooksbank v. Burn*, 3 Alta. L.R. 351. And one who first acquires the right to purchase land will, by filing a caveat, have precedence over a person claiming to be a subsequent purchaser: *Edgar v. Caskey* (Alta.), 4 D.L.R. 460.

Where one holding an interest in land under a contract of purchase agrees to sell the land to another person, but subsequently sells it to a third person, who did not have knowledge of the prior agreement to sell, the former, by filing a caveat before the latter, paying all of the purchase money and receiving an assignment of the original vendee's agreement (which receives the approval of the original vendor as required by the terms of the agreement) will acquire priority over such third person, and can obtain specific performance of his agreement: *Alexander v. Giesman*, 4 Sask. L.R. 111, affirmed (*sub nom. McKillop v. Alexander*), 1 D.L.R. 586; 45 Can. S.C.R. 582.

But where a person agrees to purchase land under a contract which prohibits the assignment of the agreement except for the whole of the vendee's interest, and then only with the approval of and countersigning