

DOMINION LAW REPORTS

GRACE v. KUEBLER.

ALTA.

Alberta Supreme Court, Scott, Stuart, Beck and McCarthy, J.J. January 13, 1917.

S. C.

VENDOR AND PURCHASER (§ II B—5)—PAYMENT OF PURCHASE MONEY—
ASSIGNMENT BY VENDOR—NOTICE—CAVEAT.

If notice of an assignment by the vendor of his rights under an agreement of sale of land has not been given to the purchaser, payment to the vendor of the balance due under the agreement will entitle the purchaser to a transfer of the land; a caveat filed in the Land Titles office after the assignment is not notice, as such, to the purchaser, who is not bound to search the register before making payment.

[*Grace v. Kuebler*, 28 D.L.R. 753, affirmed. See annotation following.]

APPEAL from the decision of Harvey, C.J., 28 D.L.R. 753, Statement.
dismissing the plaintiff's action. Affirmed.

A. H. Clarke, K.C., for plaintiff; *E. A. Dunbar*, for defendants.

SCOTT, J., concurred with BECK, J.

Scott, J.

STUART, J.:—I think this appeal should be dismissed with costs. The matter has always appeared to me to be a very simple one. But before speaking of the exact point in the case I wish to take the opportunity of making one observation suggested by what occurred. Until I find some Court by whose decisions I am bound, stamping with its approval the practice which seems to have obtained to some extent in this province whereby an owner of land, who has entered into a solemn agreement to convey the land to another upon payment of a certain money, deliberately puts it out of his power to fulfil his contract by himself transferring the land to a third party I must continue to adhere to the opinion that such an action is a reprehensible one. A purchaser may be quite confident of the promptness, good faith and, perhaps I might say, the health of his vendor but that vendor has, I think, no right to place his purchaser in a position where he must rely upon a third party for his title who may not, when the time comes to get that title, be either so prompt or honourable or, indeed, alive. It was to the plaintiff's credit that he did not register the transfer that the vendor gave him.

Stuart, J.

It is of course quite proper for a vendor to assign the debt due to him from the purchaser but it is certainly not the case