

MIDDLETON, J.:—A by-law of the defendants for the taking of a certain vote has been quashed, but the defendants intend nevertheless to go on and take the vote, apparently upon the theory that a vote may be taken by a municipality without a by-law so directing.

Prior to the passing of the statute now sec. 398(10) of the Municipal Act, the right to submit any question to the electorate was by no means clear. See *Helm v. Town of Port Hope*, 22 Gr. 273; *Davies v. City of Toronto*, 15 O.R. 33; *Dalby v. City of Toronto*, 17 O.R. 554; *King v. City of Toronto*, 5 O.L.R. 163.

The statute was passed for the express purpose of defining the conditions under which a vote on any municipal question may be taken. It has been held that this vote is something quite outside of what is permitted by the Act and is not in conformity with its provisions. It follows as a matter of course that an injunction must now be awarded to restrain a proceeding already determined to be illegal.

As this injunction determines all that is involved in the action, this motion should be turned into a motion for judgment, and the order should be framed accordingly.

The plaintiff is entitled to his costs.

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FEHRENBACH v. GRAUEL—LENNOX, J.—MARCH 2.

*Vendor and Purchaser—Agreement for Sale of Land—Action for Instalment of Purchase-money—Ability of Vendor to Convey—Right to Rescission—Damages—Limitation of—Abatement of Purchase-money—Application of Payment—Costs.*]—Action to recover \$3,330 and interest, money alleged to be due by the defendant under an agreement for the sale of land. The learned Judge said that the plaintiff acted in good faith, and, when he entered into the contract, was justified in believing that by the time the defendant became entitled to a deed he (the plaintiff) would be in a position to convey. The recitals in the agreement were sufficient to give notice to the defendant of the chain of assignments leading to the plaintiff; and the defendant was aware of the arrangement with one Zettle. There was no obligation upon the plaintiff to convey until the defendant paid in full; and the defendant was not entitled to damages. At most, if he had elected to rescind, he would be entitled only to the expense of investigating the title and preparation of