

# The Ontario Weekly Notes

Vol. IV.

TORONTO, JANUARY 24, 1913.

No. 19

## COURT OF APPEAL.

JANUARY 15TH, 1913.

\*CITY OF TORONTO v. FOSS.

*Municipal Corporations—Prevention of Use of Buildings as  
“Stores” or “Manufactories”—Municipal Act, 1903, sec.  
541a—By-law—Ladies’ Tailoring Business.*

Appeal by the plaintiffs from the order of a Divisional Court, 27 O.L.R. 264, ante 150, reversing the judgment of MIDDLETON, J., and holding that a building in Avenue road, in the city of Toronto, occupied by the defendant and used as his dwelling-house and also for the purposes of a ladies’ tailoring business, was not a “manufactory” or a “store,” within the meaning of a by-law of the plaintiffs, passed pursuant to sec. 541a of the Municipal Act, 1903, as enacted by 4 Edw. VII. ch. 22, sec. 19.

The appeal was heard by GARROW, MACLAREN, MEREDITH, MAGEE, and HODGINS, J.J.A.

G. R. Geary, K.C., for the plaintiffs.

Grayson Smith, for the defendant.

The judgment of the Court was delivered by MEREDITH, J. A.:—The onus of proving that the defendant carries on business in violation of the provisions of the by-law is upon the plaintiffs; and I cannot think that they have proved it. . . .

If the defendant’s house could in any sense be deemed a shop or store, its better description would, I have no doubt, be a workshop, because it is unquestionably used to some extent as a workshop; but as a shop it is not within the by-law or the legislation; it can be brought, if at all, within them, only as

\*To be reported in the Ontario Law Reports.