

I think that any irregularity as to the lock and key might well be considered as cured by sec. 204 of the Act.

The by-law will, therefore, be set aside with costs.

MIDDLETON, J., IN CHAMBERS.

MARCH 18TH, 1911.

McILHARGEY v. QUEEN.

*Appeal—Leave to Appeal to Divisional Court from Order of Judge in Chambers—Con. Rule 1278—No Reason to Doubt Correctness of Decision—Scale of Costs—County Court Appeal—Con. Rule 1132.*

Motion by the defendant for leave to appeal from the order of RIDDELL, J., ante 781.

R. T. Harding, for the defendant.

Featherson Aylesworth, for the plaintiff.

MIDDLETON, J.:—Under Con. Rule 1278, I can give leave to appeal only (a) when there are conflicting decisions, and (b) when there appears to be good reason to doubt the correctness of the order in question. There is an additional requirement in each case, not necessary to consider, because it is admitted that there are no conflicting decisions, and I am satisfied that the order in question is correct.

It is enough to say that Con. Rule 1132 applies only to the taxation of costs up to the judgment, and does not apply to the costs of appeal. It does not make any difference that the judgment is not entered in the Court below till after the appeal—when entered it speaks from its date—in fact it is operative from the moment it is pronounced.

The costs of an appeal depend entirely upon the order of the Court of Appeal. That Court can mould its order so as to do justice. When the order gives costs, and nothing more is said, there is nothing to cut down the costs from those *prima facie* applicable to such an appeal. There is no jurisdiction in the Taxing Officer to enter upon an inquiry under Con. Rule 1132 as to the amount involved. If this result is not deemed just, the onus is upon the party liable to pay to draw the attention of the Court to the matter and to ask for an adjudication upon the point. The Rule in question places the onus upon