

Province of Manitoba.

KING'S BENCH.

The Referee.]

WEBB v. RODNEY.

[July 8.

Interpleader—Different claimants to same amount—King's Bench Act, Rule 899.

Relief by way of interpleader may be granted, under Rule 899 of the King's Bench Act, to a vendor of land as between two agents each claiming the same amount as commission on the sale of the land, the vendor admitting that the amount is due to one or other of the agents. *Gyattorox v. Shackle* [1895] 2 Q.B. 249 distinguished.

Dennistoun, K.C., for applicant. Mulock, K.C., and Young, for respective claimants.

Mathers, J.]

CALLON v. C. N. R.

[July 17.

Railway company—Loss of baggage—Implied contract to carry personal baggage of passenger—Action by owner of goods or his assignee, neither being the passenger—What included in term "personal baggage"—Negligence.

Held, 1. Only the passenger or his assignee can sue a railway company on the implied contract with a passenger to carry safely his personal baggage arising from his having purchased a ticket for his conveyance. *Great Northern Ry. Co. v. Shepherd*, 8 Ex. 30; *Gamble v. G.W.R.*, 24 U.C.R. 409, and *Beecher v. Great Eastern Ry.*, L.R. 5 Q.B. 241, followed.

2. If the action were founded in tort and it was shewn that the goods were lost through the defendant's negligence, the owner of the goods, though he was not the passenger, could sue. *Meux v. Great Eastern Ry. Co.*, L.R. 2 Q.B. 387, followed.

3. In the absence of proof of negligence, the passenger can only recover for personal baggage lost and only on clear evidence that such were contained in the missing pieces.

4. In the case of a married woman travelling with infant children to join her husband, the husband's clothing, household effects and the clothing of grown up daughters cannot be classed as personal baggage. *McCaffrey v. C.P.R.*, 1 M.R. 350, followed.

Kilgour, for plaintiff. *Clarke*, K.C., for defendants.