

the safety of passengers independent of the question whether there was negligence or not. Their Lordships are of the opinion that there is no such obligation imposed on railway companies.

ORDER IMPROPERLY MADE—APPEAL—ACTING UNDER IMPROPER ORDER NOT APPEALED FROM—PROHIBITION.

In *Dierken v. Philpot* (1901) 2 K.B. 380, an order had been improperly made remitting a High Court case for trial in a County Court. The defendant did not appeal from the order, but on the trial in the County Court he took the objection that the order to try the case in the County Court had been improperly made. The Judge of the County Court refused to entertain the objection, and proceeded to try the case and gave judgment for the plaintiff. The defendant then applied for a prohibition. Day, J., granted the application, but a Divisional Court (Lord Alverstone, C.J., and Lawrance, J.,) reversed the order, holding that under such circumstances a prohibition ought not to be granted.

PARENT AND CHILD—ILLEGITIMATE CHILD—CONTRACT BY MOTHER TO GIVE UP CUSTODY OF CHILD—CONTRACT TO RELIEVE MOTHER OF RESPONSIBILITY TO MAINTAIN ILLEGITIMATE CHILD.

Humphrys v. Polak (1901) 2 K.B. 385, was an action brought by the mother of an illegitimate child to recover damages for breach of a contract by the defendants to assume the custody of the child and relieve the plaintiff from responsibility for its maintenance. On an application in Chambers, the statement of claim was struck out by the master, whose order was affirmed by Day, J., as shewing no cause of action. The Court of Appeal (Williams and Stirling, L.JJ.,) upheld the order, holding that an agreement by the mother of an illegitimate child to give up the custody of the child is no consideration for a contract to support the child, and that such a contract cannot be enforced at law. The reasoning of the Court does not seem altogether convincing, and it seems strange that such a contract, though inoperative to divest the mother of her legal liability to maintain the child, might not nevertheless be enforced by her. The legal theory of consideration, on which the late Sir Geo. Jessel once made some amusing remarks, seems to have been considered the obstacle to the plaintiff's right to recover; and because the plaintiff did not, besides the custody of the child, give also to the defendants a tom-tit or a canary, her case failed. But for this decision, we should have thought that the transfer of the custody of the child was a good legal consideration.