before him. "I incline to think," said the learned judge, "that for this purpose (*i.e.*, recovering damages from the defendant) the deceased must be considered as identified with the owner of the omnibus in which he voluntarily became a passenger, and that the negligence of the driver was the negligence of the deceased." I do not think the very eminent judges who decided *Thorogood* v. *Bryan* intended to affirm that the deceased, by taking his seat in the omnibus, incurred the same responsibility for the negligent acts of the driver as if the latter had been his servant. If they did mean to do so their conclusion might be perfectly logical, but their premises would be directly at variance with the principles laid down in *Quarman* v. *Burnett*, 6 M. & W. 489, which I have always regarded, and still regard, as a sound and authoritative precedent. If they did not, then they have affirmed that a passenger, travelling by a public conveyance, may be so unconnected with the driver as to be exempt from liability for his negligence, and yet be so identified with him as to lose all right of action against wrong-doers whose negligence, in combination with that of the driver, has occasioned personal injury to himself. This is a proposition which it is very difficult to understand. It must be a singular kind of relationship, and created by very exceptional circumstances, which results in the superior being affected by his inferior's negligence, in a question with wrong-doers, and not in a question with persons who are themselves free from blame. It humbly appears to me that the identification upon which the decision in *Thorogood* v. *Bryan* is based has no foundation in fact. I am of opinion that there is no relation constituted between the driver of an omnibus and its ordinary passengers which can justify the inference that they are identified to any extent whatever with his negligence. He is the servant of the owner, not their servant; he does not look to them for orders, and they have no right to interfere with his conduct of the vehicle, except, perhaps, the right of remonstrance when he is doing, or threatens to do, something that is wrong and inconsistent with their safety. Practically they have no greater measure of control over his actions than the passenger in a railway train has over the conduct of the engine-driver. I am therefore unable to assent to the principle upon which the case of *Thorogood* v. *Bryan* rests. In my opinion an ordinary passenger by an omnibus, or by a ship, is not affected, either in a question with contributory wrong-doers or with innocent third parties, by the negligence in the one case of the driver and in the other of the master and crew by whom the ship is navigated, unless he actually assumes control over their actions, and thereby occasions mischief. In that case he must, of course, be responsible for the consequences of his interference. Counsel for the appellants endeavored to support *Thorogood* v. *Bryan* upon a totally different principle from that assigned by the learned judges who decided the case. They argued alternately that the maxim *respondeat superior* does not apply, and that passengers are affected by the wrongful acts of the driver, not because he is in any sense their servant, or subject to their control, but by reason of their being for the time under his dominion. *Waite* v. *North-Eastern Ry. Co.*, E. B. &. E. 719, was the authority relied on in support of this branch of the argument. But there is no analogy between the position of an infant incapable of taking care of itself and that of a passenger *sui juris*; and the theory that an adult passenger places himself under the guardianship of the driver, so as to be affected by his negligence, appears to me to be absolutely without foundation, either in fact or law. I therefore concur in the judgment which has been moved.

LORD MACNAGHTEN. My Lords: I concur in the motion which has been proposed and in the reasons upon which it has been founded.

Order appealed from affirmed, and appeal dismissed with costs.

GENERAL NOTES.

THE MEASURE OF DAMAGE.—Counsel: "What do you consider the value of the boots you lost?" Complainant: "Let me see—they cost me new sixteen and six, and I've had them soled and heeled twice, that was five shillings; that makes one pound one and six. One pound one and sixpence, sir."—*Irish Law Times.*