

the passenger liable for the negligence of the driver. But as there was no such power of direction or control, the negligence of the driver of the car could not be imputed to the passenger. That was held to be a case of joint negligence of the railroad company and the transfer company, for which they might be sued jointly or severally.

After a thorough examination of the numerous and conflicting authorities upon this point, some of which are cited in the opinion, we then declined to follow the case of *Thoroughgood v. Bryan*, 8 C.B. 115, and other like cases, which holds the passenger liable for the contributory negligence of his driver, where there was mutual fault of two drivers causing an injury, and, as before stated, held that upon principle, as well as upon the better authorities, the passenger was not so identified with the vehicle in which he was riding as to make him responsible for the driver's fault. It was held by us that the passenger in that street-car was not responsible for the negligence of the driver; that the latter was in no just sense the agent of the former, and had no control of, or direction over, the management of the vehicle in which he was riding, so as to identify driver and passenger.

The opposite doctrine, though supported by high authority, has not been received even in England with approbation.

We cite a few of the cases and text-books touching this vexed question, but, since the subject was fully considered in *Transfer Company v. Kelly*, *supra*, we need not further consider it. See *Armstrong v. Lancashire Ry. Co.*, L. R., 10 Exch. 47; *Waite v. N. E. Rd.*, El., Bl. & L. 719 (a case of a child too young to take care of itself); *Lockhart v. Litchenthaler*, 46 Penn. St. 151; *Thompson on Carriers of Passengers*, c. 7, where all the cases *pro* and *con* are cited, notes, p. 284; *Bennett v. N. J. Rd.* 36 N. J. L. 221; 1 *Smith's Lead. Cases* (8th Am. ed. p. 505, *315; *Danville Turnpike Co. v. Stewart*, 2 Met. (Ky.) 119; *Chapman v. N. H. Rd. Co.*, 19 N. Y. 341; *Colegrove v. N. Y. & N. H. Rd. Co.*, 20 Id. 492; *Louisville, etc., Rd. v. Case's Adm'r*, 9 Bush (Ky.) 728; *Wharton on Neg.* § 395; *Webster v. H. R. Rd. Co.*, 38 N. Y. 260.