215. In America it has been followed in the courts of some states, but it has often been departed from, and upon the whole the view taken has been decidedly adverse to it. The latest case that I am aware of in that country is *Little* v. *Hacket*, 9 Davis (Sup. Ct. U. S.), 366. That was a decision of the Supreme Court of the United States, whose decisions, on account of its high character for learning and ability, are always to be regarded with respect. Field, J., in delivering judgment, examined all the English and American cases, and the conclusion adopted was the same as that at which your lordships have arrived. I have only this observation to add: The case of *Waite* v. *North-Eastern Ry. Co.*, E. B. & E. 710, was much relied on in the argument for the appellants, but the very learned counsel who argued that case for the defendants, and all the judges who took part in the decision were of opinion that it was clearly distinguishable from *Thorogood* v. *Bryan*, and did not involve a review of that case. I think they were right. As regards the other questions argued before your lordships, I have only to say that I think they were properly dealt with by the court below. I am requested by my noble and learned friend, Lord Bramwell, who was unable to remain to read the opinion which he had prepared, to state that he concurs in the motion which I am about to make. I move your lordships that the judgment of the Court of Appeal be affirmed, and the appeal dismissed, with costs.

Lord Watson. My Lords: The appellants conceded in argument that unless it can be shown that *Thorogood* v. *Bryan*, 8 C. B. 115, is a valid precedent, they cannot succeed in this appeal. Although nearly forty years have elapsed since the case was decided, I think the rule which it established must still be dealt with upon its own merits. The decision has not met with general acceptance, and it cannot be represented as an authority upon which a course of practice has followed, or upon which persons guilty, or intending to be guilty, of contributory negligence are entitled to rely. When the combined negligence of two or more individuals, who are not acting in concert, results in personal injury to one of them, he cannot recover compensation from the others for the obvious reason that but for his own neglect he would have sustained no harm. Upon the same principle, individuals who are injured without being personally negligent are nevertheless disabled from recovering damages if at the time they stood in such a relation to any one of the actual wrong-doers as to imply their responsibility for his act or default. That constructive fault, which implies the liability of those to whom it is imputable to make reparation to an innocent sufferer, must also have the effect of barring all claims at their instance against others who are *in pari delicto*, is a proposition at once intelligible and reasonable. If they are within the incidence of the maxim, *qui facit per alium facit per se*, there can be no reason why it should apply in questions between them and the outside public, and not in questions between them and their fellow wrong-doers. But the facts which were before the court in *Thorogood* v. *Bryan* do not appear to me to bring the case within that principle. My noble and learned friend, Lord Bramwell, who is so conversant with the intricacies of English pleading, suggested in the course of the argument a technical ground upon which the decision in *Thorogood* v. *Bryan* might be justified. In that view the case would not be an authority for the appellants, who accordingly supported the reason assigned for the judgment, which was simply this, that the deceased passenger, by taking the seat on the omnibus, became so far identified with its driver that the negligence of its driver was imputable to him in any question with the driver or owner of the other omnibus which ran over him and was the immediate cause of his death. Coltman and Cresswell, JJ., express themselves in terms, which if literally understood, would lead to the conclusion that he would also have been responsible for damage solely attributable to the fault of the driver. Coltman, J., said: "Having trusted the party by selecting the particular conveyance the plaintiff has so far identified himself with the owner and her servants, that if any injury results from their negligence he must considered a party to it." Maule, J., was careful to limit his observations to the case