said: "It seems to us that the negligence of the company, or of its servant, should not be imputed to the passenger, where such negligence contributed to his injury jointly with the negligence of a third party, any more than it should be so imputed where the negligence of the company, or its servant, was the sole cause of the injury." "Indeed," the chief justice added, "it seems as incredible to my mind that the right of a passenger to redress against a stranger for an injury caused directly or proximately by the latter's negligence should be denied, on the ground that the negligence of his carrier contributed to his injury, he being without fault himself, as it would be to hold such passenger responsible for the negligence of his carrier whereby an injury was inflicted upon a stranger. And of the last proposition it is enough to say that it is simply absurd." In the Supreme Court of Illinois the same doctrine is maintained. In the recent case of the *Wabash, St. L. & P. R. Co.* v. *Shacklet*, 105 Ill. 364; S. C., 44 Am. Rep. 791, the doctrine of *Thorogood's* case was examined and rejected; the court holding that where a passenger on a railway train is injured by the concurring negligence of servants of the company on whose train he is travelling, and of the servants of another company with whom he has not contracted, there being no fault or negligence on his part, he or his personal representatives may maintain an action against either company in default, and will not be restricted to an action against the company on whose train he was travelling.

Similar decisions have been made in the courts of Kentucky, Michigan and California. *Danville, etc., T. Co.* v. *Case*, 9 Bush, 728; *Cuddy* v. *Horn*, 46 Mich. 596; S. C., 41 Am. Rep. 178; *Tompkins* v. *Clay Street R. Co.*, 4 Pac. Rep. 1165.

There is no distinction in principle whether the passengers be on a public conveyance, like a railroad train or an omnibus, or be on a hack hired from a public stand, in the street, for a drive. Those on a hack do not become responsible for the negligence of the driver if they exercise no control over him further than to indicate the route they wish to travel or the places to which they wish to go. If he is their agent, so that his negligence can be imputed to them to prevent their recovery against a third party, he must be their agent in all other respects, so far as the management of the carriage is concerned, and responsibility to third parties would attach to them for injuries caused by his negligence in the course of his employment. But as we have already stated, responsibility cannot, within any recognized rules of law, be fastened upon one who has in no way interfered with and controlled in the matter causing the injury. From the simple fact of hiring the carriage or riding in it no such liability can arise. The party hiring or riding must in some way have co-operated in producing the injury complained of before he incurs any liability for it. "If the law were otherwise," as said by Mr. Justice Depue in his elaborate opinion in the latest case in New Jersey, "not only the hirer of the coach, but also all the passengers in it, would be under a constraint to mount the box, and superintend the conduct of the driver in the management and control of his team, or be put for remedy exclusively to an action against the irresponsible driver or equally irresponsible owner of a coach taken, it may be, from a coach-stand, for the consequences of an injury which was the product of the co-operating wrongful acts of the driver and of a third person, and that too, though the passengers were ignorant of the character of the driver, and of the responsibility of the owner of the team, and strangers to the route over which they were to be carried." 47 N. J. Law, 171.

In this case it was left to the jury to say whether the plaintiff had exercised any control over the conduct of the driver further than to indicate the places to which he wished him to drive. The instruction of the court below, that unless he did exercise such control, and required the driver to cross the track at the time the collision occurred, the negligence of the driver was not imputable to him, so as to bar his right of action against the defendant, was therefore correct, and the judgment must be affirmed; and it is so ordered.

APPEAL REGISTER—MONTREAL.

March 15.

Davie & Menzies.—Motion for leave to appeal from interlocutory judgment. Granted, writ to issue within one month.

Senécal & Milette.—Heard on merits, C. A. V.

Dudley & Darling.— "

Ralston & Stanfield.— "

Low & Bain.—Part heard.

March 16.

Gilmour & Willett et al.—Motion to dismiss appeal as against James O'Halloran. C. A. V.

Fairbairn et al. & Déchène.—Heard on petition to quash writ of appeal. C. A. V.

Low & Bain.—Hearing on merits concluded. C. A. V.

Kennedy & Exchange Bank.—Heard on merits. C. A. V.

Riordan & Bennett.—Heard on merits. C. A. V.

Montreal City Passenger Railway Co. & Irwin. Heard on merits. C. A. V.

March 17.

Barnard & Molson.—Bail bond set aside on motion of respondent, and eight days granted to put in new security according to law.