his own conveyance, and must take the consequences of any default on the part of the driver whom he thought fit to trust." I confess I cannot concur in this reasoning. I do not think it well founded, either in law or in fact. What kind of control has the passenger over the driver which would make it reasonable to hold the former affected by the negligence of the latter? And is it any more reasonable to hold him so affected because he chose the mode of conveyance, that is to say, drove in an omnibus rather than walked, or took the first omnibus that passed him instead of waiting for another? And when it is attempted to apply this reasoning to passengers travelling in steamships or on railways, the unreasonableness of such a doctrine is even more glaring. The only other reason given is contained in the judgment of Cresswell, J., in these words: "If the driver of the omnibus the deceased was in had by his negligence or want of due care and skill contributed to an injury from a collision, his master clearly could maintain no action. And I must confess I see no reason why a passenger who employs the driver to convey him stands in any better position." Surely, with deference, the reason for the difference lies on the very surface. If the master in such a case could maintain no action, it is because there existed between him and the driver the relation of master and servant. It is clear that if his driver's negligence alone had caused the collision he would have been liable to an action for the injury resulting from it to third parties. The learned judge would, I imagine, in that case have seen a reason why a passenger in the omnibus stood in a better position than the master of the driver. I have now dealt with all the reasons on which the judgment in *Thorogood* v. *Bryan* was founded, and I entirely agree with the learned judges in the court below in thinking them inconclusive and unsatisfactory. I will not detain your lordships further on this part of the case, beyond saying that I concur with the judgments of the learned judges in the court below, and especially with the very exhaustive judgment of Lord Esher, M.R. It was suggested in the course of the argument that *Thorogood* v. *Bryan* might be supported on the ground that the allegation that the negligence which caused the injury was the defendant's was not proved, inasmuch as it was the defendant's negligence in conjunction with that of the driver of the other omnibus. It may be, that as a pleading point, this would have been good. It is not necessary to express an opinion whether it would or not. I do not think it would have been a defense on the merits if the facts had been properly averred. If by a collision between two vehicles a person unconnected with either vehicle were injured, the owner of neither vehicle, when sued, could maintain as a defense, "I am not guilty, because but for the negligence of another person the accident would not have happened." And I do not see how this defense is any more available as against a person being carried in one of the vehicles, unless the reasoning in *Thorogood* v. *Bryan* be well founded. I have said that the decision in *Thorogood* v. *Bryan* has not been unquestioned. I do not think it necessary to enter upon a minute consideration of the subsequent cases, after the careful and accurate examination to which they have been subjected by the Master of the Rolls. The result may be summarized thus: The learned editors of Smith's Leading Cases, Willes and Keating, JJ., strongly questioned the propriety of the decision in the notes to *Ashby* v. *White*, 1 Sm. Lead. Cas. Parke, B., whose dictum in *Bridge* v. *Grand Junction Ry. Co.*, 3 M. & W. 244, Williams, J., followed in directing the jury in *Thorogood* v. *Bryan*, appears to have doubted the soundness of the judgment in that case. Dr. Lushington, in *The Milan* (Lush. 388), expressed strong disapproval of it; and though in *Armstrong* v. *Lancashire & Yorkshire R. Co.*, 33 L. T. Rep. (N.S.) 228; L. R., 10 Exch. 47, it was followed, and Bramwell and Pollock, BB., to say the least, did not indicate dissatisfaction with it, I understand that my noble and learned friend, Lord Bramwell, after hearing this case argued, and maturely considering it, agrees with the judgment of the court below. In Scotland, the decision in *Thorogood* v. *Bryan* was pronounced unsatisfactory in *Adams* v. *Glasgow & South-Western Ry. Co.*, 3 Ct. Sess. Cas. (4th series)