Brown v. *Winnwood Amusement Co., supra; Ponticorvo* v. *Clark,* 95 Cal. App. 162, 272 Pac. 591 (1928). The divergence of these views is indicative of the attitude of the courts in different jurisdictions. Few courts have gone as far as did the court in the *Lumsden* case, yet some of the language in *Murphy* v. *Steeplechase Amusement Co., supra,* indicates that the same view exists in New York today.

The contention of the minority in the principal case finds support in *Myers* v. *Park Play, Inc., supra,* which is the only Ohio case directly in point. The court in that case, applied the doctrine of assumption of risk with respect to an amusement device known as the "Dodgem," a machine operated to some extent by the patron himself. That the doctrine could be applied to the use of the "Dodgem" and not to the use of the "Bug," is entirely conceivable. In fact, a parallel situation exists in New Jersey where the court approved the doctrine as applicable in a case involving a "Dodgem," *Gardner* v. *G. Howard Mitchell, Inc., supra,* but refused to recognize it in a case involving the "Virginia Reel," a device similar to the one in the principal case. *Schnoor* v. *Palisades Realty & Amusement Co.,* 112 N.J.L. 506, 172 Atl. 43 (1934). Reasoning thus, it may be that the majority opinion in the principal case can be reconciled with the *Myers* case.

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TORTS

GUEST STATUTE — WHO IS A GUEST?

The deceased was fatally injured while riding in a car owned and operated by the defendant. He was invited to get into the car for the sole purpose of pointing out to the driver the location of a house a short distance away. In an action for negligence brought by the plaintiff, as administrator of the estate of the deceased, the common pleas court submitted to the jury the question of whether the deceased was a guest. The court of appeals reversed the resulting judgment for the plaintiff on the ground that it was manifestly against the weight of the evidence, but refused to enter final judgment for the defendant. The Supreme Court affirmed this ruling and remanded the cause for a new trial, holding that the deceased was not a guest within the meaning of Ohio G. C. sec 6308-6, which reads as follows: "The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest

while being transported without payment therefor in or upon said motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the wilful or wanton misconduct of such operator, owner, or person responsible for the operation of said motor vehicle." *Dorn* v. *Village of North Olmsted*, 133 Ohio St. 375 (1938).

In accordance with the general weight of authority the Ohio courts have interpreted the guest statute with regard to the purpose of its origin and have refused to permit recovery for "ordinary negligence" when the person being transported merely furnished gasoline, *Ernest* v. *Bellville*, 53 Ohio App. 110, 4 N.E. (2nd) 286 (1936), or contributed to a fund from which the driver received part of salary and expenses, *Casper* v. *Higgins*, 54 Ohio App. 21 (1937), in the absence of some contractual relation between the parties. There must be substantial consideration or compensation to avoid the application of the statute on the basis of carriage for hire. In event of mutual interest relationship, nothing short of definite and tangible mutual benefit will suffice. 3 O. S. L. J. 356-358 (1937).

The justification for the decision in the principal case lies in the fact that the ride furnished by the defendant afforded the deceased no appreciable benefit, either in the way of transportation or entertainment. In view of this fact it is difficult to see how he could properly be called a guest, since that word connotes an element of hospitality or entertainment which was entirely lacking here. If the deceased never possessed the essential qualities of a guest it is unnecessary to look for a contractual relation which would justify removing the rider from the category of a guest.

In applying the Connecticut statute, chapter 308 of Public Acts of 1927, sec. 1, which provides that "no person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or reckless disregard of the rights of others," the New York court held as a matter of law that the plaintiff, who rode along for the purpose of guiding the driver to a dentist's office, was a guest on the ground that there was no evidence sufficient to establish a contract between the parties by which the plaintiff was obligated to pay for his transportation. *Master* v. *Horowitz*, 262 N. Y. 609, 188 N.E. 86, 85 A.L.R. 1182 (1932). But the Connecticut statute expressly provides, as also does Ohio's, that the party be riding as

a guest. If it is true that a guest is the recipient of some type of benefit and that benefit is lacking in this situation, then the case is outside the scope of the statute and the lack of a contractual relation is immaterial. A contract involves mutuality and there can be no mutuality where all the benefit flows toward one party.

In fact situations similar to that in the principal case, courts in Massachusetts, where a guest rule has developed by judicial decision, have reached the same conclusion as did the Ohio court. *Lyttle* v. *Monto*, 248 Mass. 340, 142 N.E. 795 (1924); *Jackson* v. *Queen*, 257 Mass. 515, 154 N.E. 78 (1926); *Labatte* v. *Lavallee*, 258 Mass. 527, 155 N.E. 433 (1927).

Cases such as *Crawford* v. *Foster*, 110 Cal. App. 81, 293 Pac. 841 (1930); *Wittrack* v. *Newcom*, 277 N.W. 286 (Iowa, 1938); and *Bookhart* v. *Greenlease Motors*, 215 Iowa 8, 244 N.W. 721, 82 A.L.R. 1359 (1932), concern parties receiving demonstration rides provided for prospective purchasers by automobile salesmen; they can be distinguished from the principal case in that there is some element of mutual benefit in each.

What the result would have been had the deceased derived appreciable benefit from the ride is conjectural, although, in the absence of special circumstances, such consideration as directing the driver to the location of a certain house would hardly be sufficient to take the rider out of the guest category.

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