LEGISLATION

THE OHIO GUEST ACT

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To properly appreciate the legal significance of the Ohio Guest Act, it is desirable to look at the law as it previously stood, the difficulty which this act attempted to remedy, and the judicial interpretation of the several acts in other states.

Common Law Liability of the Owner or Operator of a Motor Vehicle to His Guest

The case of *Sparrow, Ex'r., et al.* v. *Levine, Adm'r.*[1] expresses the Ohio common law rule and is the weight of authority in this country. The rule is accurately stated in the syllabus which reads, "The owner or operator of an automobile owes to an invited guest the duty to exercise reasonable care in the operation of an automobile and not to unreasonably expose him to danger and injury."[2] The Arkansas courts have held this rule to apply whether the occupant is invited or self invited, or whether he be a guest or passenger or guest by sufferance.[3] Some courts have made the distinction between one who pays for his transportation, calling him a passenger, and one who rides gratuitously calling him a guest; and these courts impose a duty of greater degree of care to the former than to the latter.[4] Ohio

[1] 19 Ohio App. 94 (1923).

[2] See *Lindeman* v. *Rosche*, 2 Ohio Abs. 235 (1924). A minority view adheres to the degree of negligence theory. See the following authorities: *Pepper* v. *Morrill*, 24 Fed. 2d 320 (1928); *Peavy* v. *Peavy*, 36 Ga. App. 202, 136 S.E. 96 (1926); *Dailey* v. *Phoenix Inv. Co.*, 155 Wash. 597, 285 Pac. 657 (1930). This theory has been greatly disapproved in a number of cases. See *Hewlett* v. *Schadel*, 68 Fed. 2d 502 (1934).

[3] *Bennett* v. *Bell*, 176 Ark. 690 3 S.W. (2d) 996 (1928); *Guerdin* v. *Fisher*, 179 Ark. 742, 18 S.W. (2d) 345 (1929). But in any case, the host is not an insurer. *Flier* v. *Flier*, 461 Pa. 519, 152 Atl. 567 (1930).

[4] *Garrett* v. *Hammock*, 162 Va. 42, 173 S.E. 535 (1934).

apparently does not make this distinction, for the court in *Sparrow* v. *Levine*[5] said at page 101, "The courts of Ohio have not differentiated as to the degree of care in an action for damages for a tort, except in cases of carriers for hire, when the highest degree of care is required." The gratuitous nature of the transaction, or the nature of the consideration given by the occupant for his ride is, however, an important factor to be considered by the jury in determining what is reasonable care within the Ohio rule.

While in most states, including Ohio, the driver's negligence will not be imputed to the guest,[6] the latter is under a duty to use reasonable care for his own safety.[7] If the guest can be said to be contributorily negligent or acquiescent in the driver's negligence of which he is conscious and does not protest, he may not recover.[8] A guest may not completely give himself up to the care of the driver, and then claim that he was in the exercise of proper care.[9] This duty of the passenger to learn of the danger and warn the driver thereof is only to the extent of using ordinary care, however.[10] The intoxication of the guest may constitute contributory negligence, although it is not so of itself.[11]

[5] 19 Ohio App. 94 (1923).

[6] See note on imputed negligence, 32 MICH. L.REV., 274 (1934).

[7] The guest must exercise reasonable care for his own safety. *Hughes* v. *Hanslemen*, 44 Ohio App. 516 (1933); *Rohr, Admr.* v. *The Scioto Valley Traction Co.*, 12 Ohio App. 275 (1927). In *B. & O. R. R.* v. *Brown, Admr.*, 36 Ohio App. 404, 173 N.E. 298 (1930) where the host's car stalled on the railroad track, the court held that the guest was bound to exercise ordinary care for her own safety and that the fact of whether or not she exercised the proper care was a question for the jury.

[8] *Dedman* v. *Dedman*, 155 Tenn. 241, 291 S.W. 449 (1927).

[9] *Smith* v. *Rinderknect Lumber Co.* 10 Ohio App. 37 (1931); *Hocking Valley Ry. Co.* v. *Wyke* (122 O.S. 391, 17 N.E. 860 (1930). But the negligence of the host may not be imputed to the guest in Ohio unless they are in the execution of a joint enterprise. *Toledo Ry. Co.* v. *Mayers*, 93 Ohio St. 304, 112 N.E. 1014 (1916); *Ruskamp* v. *Cincinnati Traction Co.*, 23 N.P. (N.S.) 553 (1919).

[10] *Simensky* v. *Zwyer*, 40 Ohio App. 275, 178 N.E. 422 (1931).

[11] *Simensky* v. *Zwyer*, *supra*. Whether the guest was guilty of contributory negligence in going to sleep has been uniformly held to be a question of fact for the jury. See interesting notes in 12 BOSTON U.L. REV., 314 (1932); 17 MINN. L.REV., 222 (1933); 31 MICH. L.REV. 717 (1935).

The protection which the common law affords the guest has led to a tremendous amount of litigation. The increasing number of cases has caused insurance companies to bring pressure upon the several legislatures in an attempt to induce them to pass these Guest Acts, relieving hosts of liability to their guests.[12] The plight of the insurance company is well expressed in Best's *Insurance News*, issue for Dec. 10, 1932, at page 425, "Automobile liability insurance has given birth to an entirely new but very rapidly growing class of litigation, popularly termed "guest cases" in which the plaintiff, while purportly seeking compensation from the driver of the car in which he was injured, is generally using his host as a mere conduit for recovery from his assurer. Such cases are difficult if not impossible of defense on the merits, by reason of the defendant's desire to see his friend or relative collect for his injuries inasmuch as it is the insurance company that pays."

The Ohio Guest Act[13] reads as follows: "The owner, operator, or person responsible for the operation of a motor vehicle[14] 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."

Connecticut was the first state to enact this type of legislation in 1927. The amended statute in 1930 was the model for subsequent legislation in other states. The Connecticut Statute precludes recovery by the guest unless the accident "shall have

[12] For a list of states legislating on this subject, see 18 IOWA L.REV., 78, 79, Note 7 (1932).

[13] Ohio G.C. Sec. 6308-6, 115 Ohio Laws 57 (1933) effective June 14, 1933.

[14] Par. 2 of the G.C. Sec. 620 now defines "motor vehicle" as follows: " 'Motor vehicle' means any vehicle propelled or drawn by power other than muscular power, except road rollers, traction engines, steam shovels, gasoline shovels, electric shovels, well-drilling machinery, ditch-digging machinery and farm machinery."

been intentional on the part of said owner or operator or caused by his heedlessness or reckless disregard of the rights of others."

Judicial Interpretation of Guest Acts

Constitutionality

The constitutionality of the Connecticut Act was upheld in the Supreme Court of Connecticut in *Silver* v. *Silver*,[15] 108 Conn. 371, 143 Atl. 240 (1928), affirmed in the United States Supreme Court, 280 U.S. 117, 74 L.Ed. 67 (1929). The court held that a state statute providing that no person carried gratuitously as a guest in an automobile may recover from the owner or operator for injuries caused by its negligent operation, is not in conflict with the equal protection of the laws clause of the Fourteenth Amendment because of the distinction it makes between passengers so carried in automobiles and those in other classes of vehicles. In pointing out that the regulation need not apply to all vehicles, Mr. Justice Stone said in 280 U.S. 117, 124, "It is enough that the present statute strikes at an evil where it is felt and reaches the class of cases where it most frequently occurs."[16]

The Michigan Guest Act was likewise assailed as contravening the Equal Protection of Laws clause of the Fourteenth Amendment but was upheld in *Naudzius* v. *Lahr*.[17] The court said, "It would be threshing old straw to discuss the accepted fact that the motor car has presented social, financial, and governmental problems which justify the legislature in reasonably classifying it apart from other vehicles in the enactment of laws."

An Oregon statute,[18] reading that acceptance of a free ride in a motor vehicle will be presumed to be a waiver by said guest of liability for accidental injury caused him by the owner or

[15] Gen. Stat. Rev. of 1930, Sec. 1628.

[16] See *Romansky* v. *Cestaro*, 109 Conn. 654, 145 Atl. 156 (1929).

[17] 253 Mich. 216, 234 N.W. 581 (1931).

[18] Chap. 342, 1927 Session Laws.

driver, was held unconstitutional in *Stewart* v. *Hauk*.[19] The court said that while the legislature may change the remedy or the form of procedure, attach conditions precedent to its exercise, and perhaps abolish old and substitute new remedies, it cannot deny a remedy entirely. In Oregon the statute sought to wipe out entirely the jural significance of a breach of duty which previously was regarded as a cause of action. In 1929, however, Oregon changed its statute[20] to read like that of Connecticut. The amended statute was upheld in *Perozzi* v. *Ganiere*,[21] the court holding that the enactment was within the police power of the legislature and not invalid as contrary to the state constitution which gives every man a remedy by due course of law for injury done him in his person, property, or reputation. Article I, Sec. 10 of the Oregon Const.[22]

The Delaware statute relieving the operator or owner of a motor vehicle from any liability whatsoever to his guest was held unconstitutional in *Coleman* v. *Rhodes*.[23] The court said that the legislature could not relieve the operator or owner of an automobile from the consequences of an act that was intentional or wilful. Delaware, too, later enacted a new Guest Act modeled after the Connecticut statute.[24] Intentional, wilful and wanton disregard of the rights of others were made exceptions to relief of host's liability. Its constitutionality was upheld in *Hazzard* v. *Alexander*.[25]

The Ohio Guest Act which includes "vehicles" solely within its scope will (on the authority of *Silver* v. *Silver, supra)* in all probability not be held unconstitutional on the ground of re-

[19] 27 Or. 589, 271 Pac. 998 (1928).

[20] 55—1210 Oregon Code 1930.

[21] 40 Pac. (2d) 1009 (Or., 1935).

[22] This section of the Oregon Constitution is very similar to Article 1, Sec. 16 of the Ohio Constitution.

[23] 159 Atl. 649 (Dela., 1932). An amendment to the Guest Act of California eliminating gross negligence as a ground for recovery was held not unconstitutional as destroying the right of recovery for negligence. *Forsman* v. *Colton*, 136 Calif. App. 97, 28 Pac. (2d) 429 (1933).

[24] 1933 Laws Del. Vol. 38, C. 26.

[25] 173 Atl. 517 (Dela., 1934).

pugnancy to the Equal Protection of Laws clause. And the fact that the remedy of the guest in Ohio is not wholly taken away but merely limited, will probably influence the Ohio courts not to hold the Ohio Guest Act unconstitutional as depriving one of his constitutional remedy under Article I, Sec. 16 of the Ohio Constitution on authority of *Perozzi* v. *Ganiere, supra.*[26]

Is the Act Retroactive?

The first problem relative to Guest Acts that arose in the several states was the question of whether or not the Act was retroactive. The answer has usually been held to depend upon whether or not the subject matter of the act defines substantive or remedial rights. If the statute relates to substantive rights it cannot be retroactive since it would contravene Sec. 28, Art. II of the Ohio Constitution which denies the legislature the right to pass retroactive laws. This was expressly held in *Rita L'Archer* v. *Rosenberger.*[27] It has been held in Ohio in the case of *Smith* v. *N. Y. C. R. R., et al,*[28] that "a statute which relates exclusively to remedial rights is not within the purview of the constitutional inhibition against the legislative enactment of retroactive laws." In a case decided one month earlier the Ohio Guest Act was held not to be retroactive on the ground that the act contained no provision making it applicable to pending sections.[29] In *Castro* v. *Singh,*[30] the court said, "The guest's right to sue his host for gross negligence or any type of negligence existed at common law; and any statute impairing that common law right is not retroactive in operation unless made so by its terms."[31]

[26] Art. 1, Sec. 16 guarantees to every person for injury done him in his lands, goods, person, or reputation a remedy by due course of law.

[27] 31 N.P. (N.S.) 137 (1933). See also *Smith* v. *Laffar,* 137 Ore. 230, 2 Pac. (2d) 18 (1931) where the act was held to define substantive law.

[28] 122 Ohio St. 45, 170 N.E. 637 (1930).

[29] *Wm. Schultz* v. *City of Cincinnati, et al.,* 31 N.P. (N.S.) 284 (1933). See also *Weller, Exr's.* v. *W. Orstall,* 129 Ohio St. 603, 18 Ohio Abs. (1935).

[30] 131 Calif. App. 106, 21 Pac. (2d) 169, 170 (1933).

[31] See also *Godfrey* v. *Brown,* 120 Calif. 57, 29 Pac. (2d) 165 (1934); *Callet* v. *Alito,* 210 Calif. 65, 290 Pac. 438 (1930). Cf. *Willi* v. *Schaefer Hitchcock Co.,* 217 Iowa 183, 251 N.W. 158 (1933); *Kaplan v. Kaplan,* 213

Wilful Misconduct, Wanton and Reckless Disregard, and Gross Negligence[32]

In *DeShelter* v. *Kordt* (note 31) interpreting the Michigan Guest Act, the accident having happened in Michigan, the court held that the host was not wilfully negligent in running over a concrete abutment because of a glare of lights. The court defined "wilful" under the Michigan Act as "including design and purpose and implying that the act was done with a set purpose to accomplish the results which followed it. It involves more than negligence; it implies malice."[33] The court in *Reserve Trucking Co.* v. *Fairchild*,[34] defines "wilfulness" (quoting Marshall, C. J. in *Payne* v. *Vance*, 103 Ohio St. 59) as implying "design, set purpose, intention, deliberation." The court then concluded that strictly speaking, "wilful negligence" was not negligence at all; for whenever an exercise of the will is exerted there must be an end to inadvertence.[35] Thus several courts have refused to consider going to sleep while driving as wilful misconduct within the meaning of the Guest Act.[36] Massachusetts contra.[37] This rule of holding going to sleep not wilful

Iowa 646, 238 N.W. 682 (1931). Whether or not the Act defines substantive rights may become a question of some importance where an accident occurs in a foreign state: if the act is remedial or procedural the law of the forum must control; but if substantive, the law of the place where the accident occurs, governs. *Rita L'Archer* v. *Rosenberger*, 31 N.P. (N.S.) 137 (1933). *DeShelter* v. *Kordt*, 43 Ohio App. 237, 183 N.E. 85 (1931). See also *Herrell* v. *Hickok*, 49 Ohio App. 347 (1934).

[32] See the very enlightening article of Mr. J. R. Corish, The Automobile Guest, 14 BOSTON L.R. REV., 728 (1934).

[33] *Montgomery* v. *Muskingum Booming Co.*, 88 Mich. 633, 50 N.W. 729 (1891).

[34] 128 Ohio St. 519, 191 N.E. 745 (1934).

[35] See *Peterson* v. *Detwiler*, 255 N.W. 529 (Iowa, 1934); and see *Fly v. Swink*, 17 Tenn. App. 627, 69 S.W. (2d) 902 (1934), holding inadvertence not equivalent to "heedlessness" under the Texas Act.

[36] *Boos* v. *Sauer*, 266 Mich. 230, 253 N.W. 278 (1934); *Bailin* v. *Phoenix*, 102 Calif. App. 117, 282 Pac. 411 (1929); See note in 18 MARQUETTE L.REV., 193 (1934).

[37] *Blood* v. *Adams*, 269 Mass. 480, 169 N.E. 412 (1929). See *Harrington* v. *Lee Mercantile Co.*, 97 Mont. 40, 33 Pac. (2d) 553 (1934), where the driver lost consciousness at the wheel and was held not liable for resulting accident. The Court in *Cleveland Ry.* v. *Owens*, 3 Ohio Op. 516, (decided April 22, 1935) held that intoxication itself, alone does not constitute negligence.

misconduct does not obtain where a sleepy auto driver refuses to allow his guest to leave the car after which the driver falls asleep causing the car to crash.

Where the charge is wilful negligence, contributory negligence is no defense any more than it would be in an assault and battery case.[38] The court in *Higbee* v. *Jackson*[39] has defined wanton negligence in the third paragraph of the syllabus: "To constitute wanton negligence it is not necessary that there should be ill will toward the person injured, but an entire absence of care for the safety of others which exhibits indifference to consequences." Exceeding the speed limit has been held not to constitute "wanton and wilful misconduct" requisite to maintain statutory action by an auto guest.[40]

The term "recklessness" is similar to "wantoness" and is defined under the Connecticut Guest Act cases as "an indifference to the consequences of the driver's conduct."[41] In these cases the evidence must show more than negligence.[42] Mere error of judgment or mere inadvertence is not sufficient to give the guest a recovery under the statute.[43]

Elements of wanton and wilful misconduct are well stated by the court in *McLove* v. *Bean*.[44] They are: 1. Knowledge of the situation requiring the exercise of ordinary care; 2. Ability to avoid injury by ordinary care; 3. Omission to use care to

[38] *DeShelter* v. *Kordt, supra,* citing *Gibbard* v. *Cursan,* 225 Mich. 311, 196 N.W. 398 (1933).

[39] 101 Ohio St. 75, 128 N.E. 61 (1920). This definition was approved in *Reserve Trucking Co.* v. *Fairchild,* 128 Ohio St. 519 (1934), which in turn is quoted by the Court in *Bennie Booksbaum* v. *J. M. Cousins,* 4 Ohio OP. 82 (decided September 19, 1935).

[40] *Finkler* v. *Zimmer,* 258 Mich. 336, 241 N.W. 851 (1932). Failure to perform a statutory duty is not wilful misconduct within the Act. There must be actual or constructive knowledge of peril. *Brown* v. *Fernandez,* 140 Calif. App. 689, 36 Pac. (2d) 122 (1934).

[41] *Vanderkruik* v. *Mitchell,* 118 Conn. 625, 173 Atl. 900 (1934).

[42] *Berman* v. *Berman,* 110 Conn. 169, 147 Atl. 568 (1929).

[43] *Vanderkruik* v. *Mitchell,* supra.

[44] 263 Mich. 113, 248 N.W. 566 (1933).

avert the threatened danger.[45] Wilful or wanton misconduct need not be the sole cause of the accident in order to render the host liable under the act. If wilful misconduct contributed in the least respect, this is sufficient. *Luke* v. *Marion*, 271 Ill. App. 48 (1933).

Gross negligence interpreted under the Nebraska Guest Act is defined as being greater than want of ordinary care or slight negligence and is equal to negligence of a very high degree but does not necessarily extend to wanton or wilful disregard.[46] The examination of the cases defining gross negligence reveals a hopeless turmoil of definitions, some courts including wantonness as an element, others not. The Vermont test of gross negligence is "indifference to legal duty or other forgetfulness of the plaintiff's safety." The Ohio rule on the subject seems the most reasonable. The court in *Sparrow* v. *Levine*[47] says: "An examination of the authorities in Ohio leads to grave doubts as to whether there is an intelligible distinction existing between gross negligence and mere negligence. Gross negligence is negligence "with a vituperative epithet."[48]

Who Is a Guest Within the Act

Whether one is a guest within the meaning of the Guest Act becomes very important where the Act is pleaded as a de-

[45] See to the same effect, *Elowitz* v. *Miller*, 265 Mich. 551, 251 N.W. 548 (1934). See also *Forsman* v. *Colton*, 136 Calif. App. 97, 28 Pac. (2d) 429 (1932) distinguishing wilful misconduct from negligence. Cf. *Monica* v. *Smith*, 138 Calif. App. 695, 33 Pac. (2d) 418 (1934) defining these terms.

[46] Cf. *Meck* v. *Fowler*, 35 Pac. (2d) 410, 412 (1934). Reversed in 45 Pac. (2d.) 194. This court said, "In this state the degrees of negligence are recognized. . . . In my opinion wilful misconduct is merely a degree of negligence, but of the highest or greatest degree."

Where a host is grossly negligent it is no defense that he did everything possible to extricate his guest from the peril which he made for him. *Meath* v. *Northern Pac. Ry. Co.*, 179 Wash. 177, 36 Pac. (2d.) 533 (1934).

[47] 19 Ohio App. 94, 101 (1923).

[48] See *Telegraph Company* v. *Griswold*, 37 Ohio St. 301 at page 312, 41 Amer. Rep. 500 (1881). In *Simon* v. *Detroit Ry.*, 196 Mich. 586, 589, 162 N.W. 1012, 1013, gross negligence is defined as "The Intentional failure to perform a manifest duty, in wanton, wilful or reckless disregard of the consequences as affecting the life or property of another."

fense. Section 3 of the California Guest Act specifically defines a guest as being a person who accepts a ride in any vehicle without giving compensation therefor.[49] In *Crawford* v. *Foster*[50] the court said, "We think the meaning of the language used is that a guest is one who is invited, either directly or by implication to enjoy the hospitality of a driver of a car; who accepts such hospitality;[51] and who takes a ride either for his own pleasure or on his own business without making any return to or conferring any benefit upon the driver of the car other than the mere pleasure of his company."[52]

It is generally held that one giving some consideration for carriage is a passenger and not a "guest" within the Guest Acts.[53] The Ohio Guest Act specifically relieves a host of liability to a "guest while being transported *without payment* therefor." What then constitutes payment to take the case out of the Act? The consideration given for the ride need not necessarily be monetary. Thus in *Haney* v. *Takakura*,[54] where the plaintiff rode with his host, assisting in marketing oranges at the host's request, the plaintiff was held not a guest but a passenger rendering compensation. The court in *Smith* v. *Leflar*,[55] in explaining the Oregon statute defined payment as "the transfer of money or property or some other thing of value in the discharge of an existing obligation. Ordinarily it means the discharge in money of a sum due. And the test of whether there was a sum due for transportation . . . is whether the defendant could have recovered in an action at law for the reasonable or agreed value of the transportation furnished." It has been

[49] Stat. 1929 page 1580.

[50] 110 Cal. App. 81, 293 page 841 (1930).

[51] The host-guest relationship is not affected by the fact that the host and guest are blood relatives. *Najiar* v. *Horwitz*, 172 Atl. 255 (Rhode Island, 1934). See also *Kaplan* v. *Kaplan*, 213 Iowa 646, 239 N.W. 682 (1931).

[52] See the Restatement of Torts, sec. 490, for the A.L.I. definition of "guest." See *Nemoitin* v. *Berger*, 111 Conn. 18, 149 Atl. 233 (1930); *Romansky* v. *Cestaro*, 109 Conn. 654, 145 Atl. 156 (1929).

[53] *Garrett* v. *Hammack*, 162 Va. 42, 173 S.E. 535 (1934).

[54] 2 Cal. App. (2d) 1, 37 Pac. (2d) 170 (1934).

[55] 137 Ore. 230, 2 Pac. (2d) 18.

also held that it is immaterial from whom the consideration emanates in order to constitute the occupant a passenger and not a guest.[56] Conferring a benefit upon the host is sufficient to eliminate the occupant from the operation of the Guest Act.[57]

Where the riding in the host's car is to result in some mutual benefit to the occupant and host, the occupant is not a guest within the Act.[58] See the recent case of *Hallgreen* v. *Wilson* (decided March, 1935), 18 Ohio Abs. 652, in which a servant contemplating transportation to her home as part of her compensation was held not a guest on the doctrine of mutual benefit. This situation of mutual benefit often arises in cases where a salesman of an auto dealer invites a prospective purchaser for a demonstration ride and an accident occurs. See a leading case, *Bookhart* v. *Greenlease-Lied Motor Co.*, 215 Iowa 8, 244 N.W. 721 (1933). The court said at page 723, "A prospective buyer of an automobile . . . is not riding therein as a matter of hospitality—as a mere gratuity—but is rendering value received for his transporation."[59] The same rule applies when a

[56] *McGuire* v. *Armstrong*, 268 Mich. 152, 255 N.W. 745 (1934); see *Blanchette* v. *Sargent*, 173 Atl. 383 (N.H., 1934) where a motorist promised to pick the paintiff up in his auto, his son promising to "fix it up" with the motorist. "It is immaterial whether the compensation is direct or indirect." *Haney* v. *Takikura* (Note 54).

[57] *Moreas* v. *Ferry*, 135 Calif. App. 202, 26 Pac. (2d) 886 (1933).

[58] "The legislature, when it used the word 'guest' did not intend to include persons who are being transported for the mutual benefit of both the passenger and the operator . . . of the car." *Kruey* v. *Smith*, 108 Conn. 628, 144 Atl. 304 (1929).

In the following cases occupants of cars have been held not to be guests: A farm employee driven to work by his employer. *Russell* v. *Parlee*, 115 Conn. 687, 163 Atl. 404 (1932).

A servant driven by his employer to buy shoes for use in his employment, *Knuston* v. *Lurie*, 217 Iowa 192, 251 N.W. 147 (1933).

One gratuitously helping to deliver goods. *Jackson* v. *Queen*, 257 Mass. 515, 154 N.E. 78 (1926).

Skilled driver accompanying novice for benefit of novice. *Semons* v. *Toune*, 285 Mass. 96, 180 N.E. 605 (1934).

One cranking a car for his host. *Hunter* v. *Baldwin*, 268 Mich. 106, 255 N.W. 431 (1934).

[59] In *Olefsky* v. *Ludwig*, 272 N.Y.S. 158, 242 App. Div. 637 (1934), the court held that as a matter of law the plaintiff's contribution to expenses such as gasoline, oil and garage charges do not constitute "payment for transportation" within the Connecticut Guest Act.

plaintiff is a prospective purchaser of real estate riding in the vendor's car for purposes of inspecting the property.[60] Master-servant relationships where tangible benefits accrue to the driver from the transportation such as saving the driver's time or facilitating his work are not within the Guest Act.[61] The courts, keeping in mind the purpose of the Act, are prone to find some consideration if at all possible where the facts warrant, in order that the case may not come within the Guest Act.

In conclusion it may be said that the Guest Acts have undoubtedly accomplished their aim, namely, to relieve insurance companies of court actions in which guest and driver collude to mulct the insurance company. While the common law of some states is identical to that which the guest statutes have codified, it is expected, nevertheless, that within a few years practically every state will enact this type of legislation.

[60] *Sullivan* v. *Richardson*, 119 Cal. App. 367, 6 Pac. (2) 567 (1931).
[61] *Knuston* v. *Lurie*, 217 Iowa 192, 251 N.W. 147 (1933).