

## Comment on Recent Decisions

**AUTOMOBILES—GUEST DRIVER—LIABILITY OF OWNER—STANDARD OF CARE.**—The defendant, the owner and operator of an overloaded truck, requested the deceased, a guest passenger to drive. The defendant allegedly knew that the guest was not aware of the overload, was an inexperienced driver and physically unable to manage an overloaded truck. The guest was killed when the truck overturned due to its overloaded condition. *Held*, demurrable in failing to show that the defendant was guilty of gross negligence, if of any negligence at all. *Sheffield v. Studor* (Ga. App. 1935) 178 S. E. 409.

There is no statutory law governing the situation in Georgia, the principle of gross negligence was established judicially. *Lee v. Lott* (Ga. App. 1935) 177 S. E. 92; *Epps v. Parrish* (1921) 26 Ga. App. 399, 106 S. E. 297. This minority view is sustained in a few jurisdictions: *Massalatti v. Fitzroi* (1917), 228 Mass. 487, 118 N. E. 168, L. R. A. (1918) C. 264; *Blood v. Austin* (Wash. 1928) 270 Pac. 103; *Boggs v. Plybon* (1931) 157 Va. 30, 160 S. E. 77. In New Jersey liability attaches only where the host has been guilty of wilful negligence. *Faggioni v. Weiss* (1923) 99 N. J. Law 157, 122 Atl. 840. The position of Pennsylvania is not entirely clear. *Conroy v. Commercial Casualty Co.* (1928) 292 Pa. 219, 140 Atl. 905; *Moquin v. Mervine* (1929) 291 Pa. 79, 146 Atl. 443. In Missouri the host owes the guest the duty of exercising the highest degree of care. *R. S. Mo.* (1929) Sec. 7775, *Kaley v. Huntley* (Mo. 1933) 63 S. W. (2d) 21. The great weight of authority however, is that the driver of an automobile owes an invited guest the duty of exercising reasonable care in its operation so as not unreasonably to expose the guest to danger and injury by increasing the hazard of travel. *Thomas v. Carter* (Ala. 1927) 117 So. 634; *Olsen v. Hermansen* (1922) 196 Wis. 614, 220 N. W. 203; *Central Copper Co. v. Klefisch* (Ariz. 1928) 270 Pac. 629; *Gurdin v. Fisher* (Ark. 1929) 18 S. W. (2nd.) 345; *Benjamin v. Noonan* (Cal. 1929) 277 Pac. 1045; *Warput v. Reading* (1928) 250 Ill. App. 450; *Note* (1929) 65 A. L. R. 952. No distinction is recognized between the guest who asked for the favor and the guest who is invited by the host. *Mitchell v. Raymond* (1923) 181 Wis. 591 195 N. W. 855. The rule also applies to a guest at suffrance. *Munson v. Rupker* (Ind. App. 1925) 148 N. E. 169. The limitation placed by the authorities upon the rule of ordinary care, to wit: that it only applies in instances where there is involved an increase of an existing hazard, or the creation of a new peril, is significant in its implication that as to existing risks, such as might inhere in the mechanism of a car, or the host's lack of mechanical knowledge, the rule is inapplicable. *Higgins v. Mason* (1930) 255 N. Y. 104, 174 N. E. 77.

In jurisdictions which pay homage to the gross negligence rule, if the passenger injured was riding at the request and for the benefit of the owner, the rule of ordinary care applies. *Lytell v. Monto* (1924) 248 Mass. 340, 142 N. E. 795. If he is an unwilling passenger he is entitled to ordinary care. *Blanchard v. Ogletree* (1929) 41 Ga. App. 4, 152 S. E.

116. The protest of the passenger for slower speed may not be sufficient to entitle him to this protection. *Wachtel v. Bloch* (1931) 43 Ga. App. 756, 160 S. E. 97. In Massachusetts in cases when death has resulted the rule of ordinary care is applied by statute. *Gallup v. Lazatt* (1930) 271 Mass. 406, 171 N. E. 658. It is difficult to find convincing reasons for the proposition that while the plaintiff is a member of the general public, the driver owes him the duty of ordinary care, but upon entering the automobile, the driver's duty immediately shifts to that of slight care. One justification urged has been that the guest is favored. Although the argument may be forceful when applied to this type of case, such a conclusion is not applicable where the relationship is for the benefit and convenience of the driver or their mutual benefit. See White, *The Liability of an Automobile Driver to a Non-paying Passenger* (1912), 18 Va. L. R. 342, et seq. It will not do to say that the driver owes no more duty to the guest than a gratuitous bailee owes to a block of wood. *Munson v. Ruppker*, supra.

J. L. A. '37.

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CONTRACTS—FUTURE INSTALLMENTS—DECLARATORY JUDGMENTS.—In an action on an accident insurance policy providing for monthly installments to the insured during total disability, plaintiff seeks to recover accrued installments to the commencement of his action, installments accruing between the commencement of the action and the trial, and to be granted a declaratory judgment as to installments as they come due in the future. The lower court gave judgment for the plaintiff on all three grounds. *Held*, on appeal, plaintiff is entitled to installments accrued at the commencement of his action and to those accruing between the commencement of the action and the trial, but he cannot recover, by resort to a declaratory relief statute, installments due in the future. *Brix v. Peoples Mutual Life Insurance Co.* (Calif. Sup. Feb. 20, 1935). 41 Pac. (2nd) 537.

Authority as to the right to judgments for future installments under such an insurance policy is conflicting. In some jurisdictions, notably Kentucky, they have been granted without the invocation of declaratory relief statutes; usually contingent upon the continuation of the insured's disability. *Prudential Life Insurance Co. of America v. Hampton* (1933) 252 Ky. 145, 65 S. W. (2nd) 980; *Equitable Life Insurance Society of the United States v. Branham* (1933) 250 Ky. 472, 63 S. W. (2nd) 498. Where the insurer has clearly indicated his intention not to perform in the future the majority of states permit an action for breach of the entire contract. *Lovell v. St. Louis Mutual Life Insurance Co.* (1884) 111 U. S. 264; *McKee v. Phoenix Life Insurance Co.* (1859) 28 Mo. 383; *Indiana Life Endowment Co. v. Carnithan* (1915) 62 Ind. App. 567, 109 N. E. 851; Freeman, *On Judgments* (5th Ed. 1925), Vol. 3, pp. 2780-2792; Williston on Contracts (1920), Vol. 3, Sec. 1328. In the absence of such repudiation by the insurer, the general rule is that recovery may be had only for accrued installments. *Green v. Inter-Ocean Casualty Co. of Cincinnati.* (1932) 203 N. C. 767, 167 S. E. 38; *Mid-Continent Life*