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Negligence—Owner Not Liable for Death of Boy Who Ran in Front of Street Car When Boy Was Ordered off the Premises

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place himself under the representatives of the plaintiff; and as a result the
plaintiff was a special employer and would be liable for any injury which
followed while the pilot was under their direction.

NEGLIGENCE—OWNER NOT LIABLE FOR DEATH OF BOY WHO RAN
IN FRONT OF STREET CAR WHEN BOY WAS ORDERED OFF THE
PREMISES.


Several small boys were playing upon the defendant’s lumber pile. An
employee of the defendant “chased” the boys away, one of whom, the plaintiff’s
decedent, ran into the street and was killed by a street car.

The Court held that the defendant could not be held liable, saying, “The
fact that the defendant might reasonably have anticipated a possible injury
to the plaintiff, plays no part in determining willfulness. There must be
some evidence tending to show the maliciousness of the defendant.”

STREET RAILWAYS—LIABILITY FOR DEATH OF A BICYCLIST COL:
LIDING WITH PASSENGER PERMITTED TO ALIGHT AT THE MID-
DLE OF A CITY BLOCK.

*Gilman v. Fleming*, 265 S. W. 104. (Mo. App.) 1924.

A motorman of defendant railway company negligently opened a car door
and permitted a trainman, not on duty, to alight in the middle of a block,
while the car was in motion. The plaintiff’s son, a bicyclist, struck the
alighting trainman in such manner as to upset the bicycle and precipitate
the rider beneath the wheels of the moving street car, causing injuries from
which he died. A petition to this effect, charging negligence of the motorm-
man, was held sufficient.

*Held*, the fact that the alighting trainman may have been negligent in
failing to watch for traffic does not negative the motorman’s carelessness in
opening the door while the car was in motion and at a place not used as a
regular stop.

The fact that the trainman who alighted and with whom deceased col-
lided, was not produced as a witness or his absence accounted for, was held
to be a circumstance for the jury’s consideration. The custom of permitting
employees and certain public servants to board and alight at places other
than the regular stops, was shown but held to be no defense to an action for
negligence in so doing.

The questions of proximate cause and of negligence are for the jury,
who found the opening of the door by the motorman and permitting the
trainman to alight under the circumstances constituted negligence, and that
such was the proximate cause of the injuries and death of plaintiff’s deceased
son. It was held to be no defense that the motorman anticipated no such
occurrence, which as a reasonably prudent man he should have anticipated.