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## Street Railways—Liability for Death of a Bicyclist Colliding with Passenger Permitted to Alight at the Middle of a City Block

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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.**

*Miller v. Schmidt*, 126 Atl. (N. J.) 309.

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 COLLIDING WITH PASSENGER PERMITTED TO ALIGHT AT THE MIDDLE OF A CITY BLOCK.**

*Gilman vs. 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 motorman, 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 collided, 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 defence that the motorman anticipated no such occurrence, which as a reasonably prudent man he should have anticipated.