



A Wrongful Death in New Castle

BY FRANK GIBBARD

Today New Castle, Colorado is a growing and vibrant mountain community with a lively tourist industry. But when it emerged as a mining town and railroad hub in the 1880s, it was a grittier, more industrial place. Like many towns of the Old West, New Castle enjoyed quick and dramatic economic growth. By the end of its first decade, it boasted newspapers, shops, an opera house, and a jail, along with a number of saloons and houses of ill repute. But the town's early boom times were also marred by a series of disasters.

A Fiery Past

New Castle is situated near a highly productive soft coal seam. The high-quality coal burns easily and proved ideal for railroad and smelter operations.¹ But the seam also contains unusually

high levels of flammable methane gas mixed in with the high-grade coal. The presence of this gas helps explain why, within a few decades of their opening, the New Castle mines suffered from a series of deadly explosions and fires.²

The first and worst of the New Castle mine explosions occurred on February 19, 1896, when the town's principal mine, the Vulcan, exploded, killing 49 miners.³ The mine later reopened under new management, but exploded again in 1913, killing 37 more miners. After another explosion in 1918 killed three more miners, the Vulcan mine closed for good. But despite the closure, an underground fire ignited by the explosions has continued to burn in the town's abandoned coal mines for over 100 years.⁴ It has been called the longest-burning underground coal fire in the United States.⁵

If that wasn't enough for the history books, a different form of fiery tragedy struck New Castle about a year and a half after the first mine explosion: a railroad collision that killed roughly 20 people. Although the death toll did not reach that of the Vulcan mine explosions, the inability to determine exactly who perished in the collision intensified the tragedy for a town still reeling from the mine disaster. Denizens learned about the victims, including unidentified human remains, through grisly accounts published in local newspapers. One unidentifiable young woman became the subject of a wrongful death case that progressed all the way to the Colorado Supreme Court.

A Shared Stretch of Track

New Castle served as a transportation hub for two railroads: the Denver & Rio Grande (D&RG) and the Colorado Midland. The railroad lines that stopped in New Castle were conveniently located for transporting coal up to mountain smelters. But the trains also carried passengers and freight that headed east and west across Colorado.

Between New Castle and Grand Junction, the Midland and the D&RG shared a joint track. The Midland ran freight trains carrying livestock and fruit east from Grand Junction through New Castle. The D&RG ran westbound

passenger trains over the same tracks. Careful timing was required to avoid collisions between freight and passenger trains. Unfortunately, the conductors' timing was not always precise.

To avoid collisions, eastbound trains were required to stop and register at New Castle.⁶ This allowed the railroads to coordinate layovers down the line, when eastbound freight trains would be shunted to a side track to allow westbound passenger trains to pass. This protocol was especially important in the fall, when Colorado Midland ran a large number of eastbound trains containing fruit and livestock.⁷

The Collision

Just after midnight on September 10, 1897, a Colorado Midland extra freight stock train was running at high speed, trying to reach New Castle.⁸ The early newspaper reports stated that the conductor, a man named Frank Burbank, was

trying to avoid a layover at Silt, a few miles west of New Castle. Ordinarily, Burbank would have waited on a side track at Silt for the westbound D&RG passenger train to pass.⁹ But later accounts say he was trying to beat the D&RG train to the switch at Gramid, closer to New Castle.¹⁰ Either way, Burbank had information that the D&RG No. 1, the westbound passenger train, was running an hour late, and he saw a chance to jump the gun.¹¹ He hoped to beat the D&RG train to the usual layover point before stopping for the mandatory registration at New Castle.

Burbank's plan almost worked. Unfortunately, the D&RG was not running quite as far behind as he thought. By 12:15 a.m., it had already passed through New Castle and was headed west toward Grand Junction. A mile and a half west of New Castle, the Colorado Midland stock train met the D&RG passenger train head-on.

The Explosive Aftermath

The collision was catastrophic. The two train engines crumpled like accordions, their huge pistons smashed together.¹² Many passengers and crewmen died or were seriously injured in the crash. But the worst was yet to come.

Trains in this era carried gas used to light and heat the passenger compartments. When the two trains collided, the gas tank exploded, turning both trains into a flaming mass. Rescuers could not reach the victims, some of whom had survived the wreck with relatively minor injuries but were then pinned in the wreckage and burned to death.¹³

Afterward, some of the bodies were so badly charred that they were unrecognizable. Police attempted to identify the victims by their belongings, such as a shaving mug or a gold watch inscribed "From mother to Mamie."¹⁴ The newspaper accounts spared their readers



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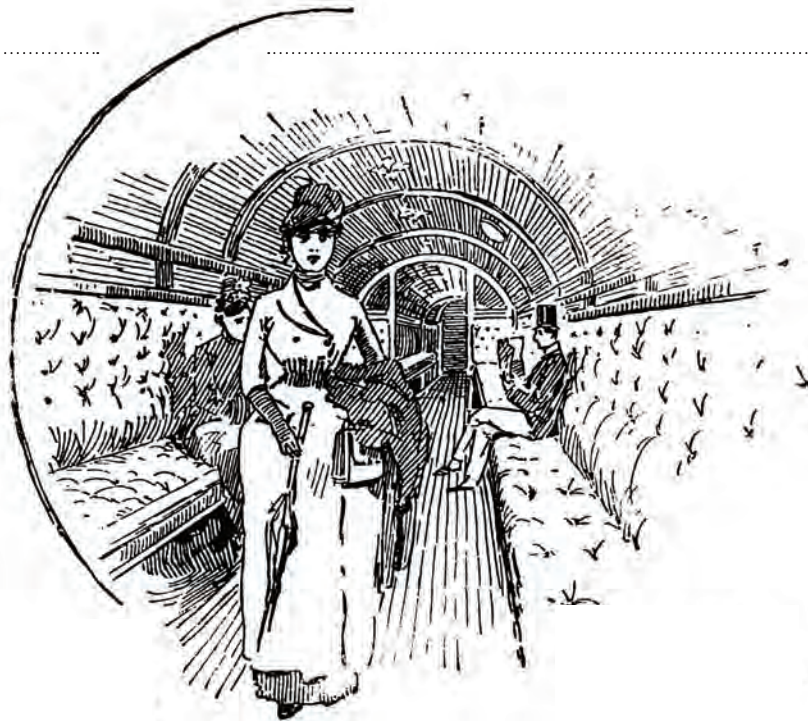
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few of the hideous details of the scene.¹⁵ They also ran extended lists of the victims, which included several unidentified remains. One of the bodies too badly charred to be identified was likely that of a woman known to us only as “Mrs. Gunning.”

Mrs. Gunning’s Fateful Voyage

John B. Gunning lived in Ouray, Colorado. His wife lived with her parents in Cedar Rapids, Iowa.¹⁶ By the time of the railroad disaster, the couple had been married for about a year. By September 1897, Mrs. Gunning had arranged to join her husband in Ouray.

Before embarking to Ouray, Mrs. Gunning purchased and shipped a large quantity of household supplies to her husband. On September 7, 1897, she purchased a train ticket to Grand Junction, Colorado from the depot in Cedar Rapids. Her itinerary required her to travel on three different railroads, over several days: the Burlington, Cedar Rapids & Northern; Rock Island; and the D&RG.

Mrs. Gunning left Cedar Rapids the same night she bought her ticket. Her father, mother, and several friends accompanied her to the depot and saw her onto the train. They later testified that when she boarded the train, the 23-year-old traveler was carrying a bag slung across her shoulder, an easel, a lunch basket, a small box, and a cape. She wore a watch that

her parents had given her as a birthday present, and finger rings, including a diamond ring her husband had given her.

Her traveling companions later remembered Mrs. Gunning. When she left Kansas City, “she became acquainted . . . with a gentleman, who rode with her on that train to Denver.”¹⁷ He helped her change trains at Denver and rode with her to Salida. He later remembered she was carrying “a gold watch, a hand bag with a long strap over her shoulder, a well-filled lunch basket, and a large easel.”¹⁸

At Salida, the man left the train, while she continued west. A lady and her son, who rode with her from Denver to Salida, also remembered Mrs. Gunning. The lady specifically recalled her easel and the diamond ring she wore.

The Lawsuit

After the crash, Mr. Gunning sued the D&RG and other defendants, including the receiver for Colorado Midland, in Arapahoe County District Court. He sought damages for negligence resulting in his wife’s death. A principal weakness in Mr. Gunning’s case was that “[w]hat was claimed to be [Mrs. Gunning’s] remains was so badly burned that identification from the remains itself was impossible.”¹⁹ The science of forensic anthropology, which seeks to identify human remains after a disaster, was still in its infancy at the time. Proof that Mrs. Gunning perished

in the crash would have to be established primarily by circumstantial evidence rather than scientific techniques.

In addition to testimony from her friends, family, and traveling companions that Mrs. Gunning had been on the train, her husband offered testimony from the train’s conductor, who identified the ticket he took from her for the last leg of her journey, and from the ticket agent at Cedar Rapids who had sold her the ticket. The coroner also testified that “he found the trunks of two female bodies in the space occupied by the two coaches immediately in the rear of the [train’s smoking car]; that upon the body of one (an adult) he found a watch; that the cloth upon this body was not so badly burned but that its texture could be identified.”²⁰ His description of that victim’s clothing matched what Mrs. Gunning had been wearing.

The coroner also found a diamond ring in the ashes near the two bodies. He sent the watch and the ring to the D&RG’s general passenger agent, who turned them over to Mr. Gunning. Mr. Gunning identified them as his wife’s. He gave the watch and ring to her parents, who identified them as the ones she had been wearing when she left for Ouray.

Despite all this circumstantial evidence, was it possible that Mrs. Gunning had somehow survived, and used the crash to run away from an unhappy life? The testimony seemed to rule out that possibility. It showed “that her relations with her parents were of the most cordial nature, that when she left home she was in the best of spirits, and that there was not the slightest trouble between her and her husband.”²¹ Finally, there was testimony that “[s]he has never been heard from since the time of the wreck.”²²

Faced with this evidence of death, the trial court directed a verdict in favor of Mr. Gunning, and ordered the jury to determine the amount of damages. The jury awarded him \$4,000 for the loss of his wife. There does not seem to have been much dispute that the defendants had been negligent. Only the damages were in question.

The Appeal

D&RG and the other defendants appealed to the Colorado Supreme Court. They challenged

some of the evidence used to establish that Mrs. Gunning had been a passenger on the wrecked train, characterizing it as incompetent and inadmissible. But the Court stated it found plenty of “clearly competent” evidence that “leads irresistibly to the conclusion that Mrs. Gunning was killed in the wreck.”²³ It then detailed the evidence from the coroner and the various lay witnesses that had proved that fact at trial, which it stated “establishes beyond all question the identity of the remains found in the wreck as those of Mrs. Gunning.”²⁴

DR&G next argued that the \$4,000 verdict was excessive. In connection with this argument it also challenged one of the damage instructions, which told the jury “that it was difficult to adduce direct evidence of the exact pecuniary loss occasioned the plaintiff by the death of his wife, or to show the exact value of her services, and that they were permitted to determine the question of damages from their own observation, experience, and knowledge conscientiously applied to the facts and circumstances of the case.”²⁵ The Court, describing Mrs. Gunning as “intelligent and cultured, frugal and industrious, and a devoted wife,” found the instruction was proper and that the evidence supported the jury’s damage award.²⁶

Finally, there was the question of Colorado Midland’s receivership. During the Panic of 1893, the price of silver crashed. Many mining-related companies were devastated. Both Colorado Midland’s parent company, the Atchison, Topeka and Santa Fe Railway, and Colorado Midland went into receivership.²⁷ Colorado Midland remained in receivership at the time of the crash. In his action, Mr. Gunning had named the receiver as a defendant.

The Colorado Midland was eventually sold at a foreclosure sale and the receiver was discharged. He argued that due to the sale, Mr. Gunning could not properly have sued him “because, when the property over which he had control passed from his hands in pursuance of the orders of the court, he was discharged from his trust, and his official liability ended with the termination of his official existence.”²⁸ The Court disagreed, noting that the order discharging the receiver had been conditioned on the purchaser’s satisfaction of the receiver’s

obligations or liabilities incurred before the sale. Thus, “for purposes of this action he was still to be regarded as the receiver of the Colorado Midland Railroad Company” and could still satisfy Colorado Midland’s obligations to Mr. Gunning out of the company’s property.²⁹

The Court also rejected arguments that the Colorado Midland could not be joined to the action because its obligation was governed by the contract of sale, while the other defendants were liable in tort; and that the state district court had lacked jurisdiction over the Colorado Midland because its purchaser acquired the railroad under the terms of a federal court decree. It affirmed the verdict in favor of Mr. Gunning.

Conclusion

As the Court remarked, the damage award for Mrs. Gunning’s death “was in no sense a

solace for the grief or injured feelings of plaintiff occasioned by the death of his wife.”³⁰ Instead, the jury was limited to the dispassionate task of determining the “net pecuniary benefit” of her “services less the cost of properly and suitably maintaining her.”³¹ In the end, of course, no dollar figure could ever really be assigned to the value of the life of the cultured and intelligent young woman with the easel, on her way to Ouray to start her married life with her new husband, or to that of any of the other victims of the horrific New Castle crash of 1897. CL



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NOTES

1. Shrull, *The Legend of the Burning Mountain: An Early History of New Castle* at 15 (Stoney Mtn. Pub. 2000). The coal seam lies beneath a large mountain peak that overshadows the town and extends under a ridge located nearby on the south side of the Colorado River, part of the Grand Hogback. According to Shrull, before white settlers arrived, the Ute Indians called the big peak “Smoking Mountain,” and the settlers later renamed it “Burning Mountain.” The name seems apt.
2. An informative video about New Castle’s history of mine fires can be viewed at <https://newcastlecolorado.org/our-community/history-highland-cemetery-museum>.
3. See Shrull, *supra* note 1 at 23.
4. See *id.* at 5. Rocky Mountain Fuel, the company that owned the mine, closed off the mine without extinguishing the fire that still smoldered inside the mountain. The Vulcan mine fire joined another fire that was already burning inside the mountain, left over from the Consolidated or “New Castle” mine. The Consolidated mine had previously been closed and abandoned after yet another uncontrollable fire on June 30, 1899. See *generally id.* at 28–32. Today the coal fires have left an eerie scar on the side of the ridge, where snow does not accumulate and vegetation does not grow.
5. See <https://kdvr.com/2016/11/15/120-year-old-fire-still-burning-in-colorado-town>.
6. See Shrull, *supra* note 1 at 39.
7. See *id.*
8. “News from the Wreck,” *Rocky Mountain Sun* (Aspen) at p. 1, col. 1–2 (Sept. 11, 1897).
9. See *id.*
10. See, e.g., Shrull, *supra* note 1 at 39. “Gramid”

got its name by combining the first three letters of each of the two railroads.

11. See “News from the Wreck,” *supra* note 8.
12. “Most Terrible Wreck!!” *Aspen Daily Times* at p. 1, col. 1 (Sept. 11, 1897).
13. See *id.*
14. “Thirty Perished in the Wreck,” *The Evening Chronicle* (Leadville) at p. 1, col. 3 (Sept. 11, 1897).
15. See *id.* (reporting the “charred remains of two women, apparently clasped [in] each other’s arms” with “[t]heir heads and lower limbs . . . burned off”); *The Daily Journal* (Telluride) at p. 1, col. 1 (Sept. 11, 1897) (“A barrel of bones and flesh was taken out this morning, and it can never be positively known whose they are.”).
16. The facts are taken from *Denver & R.G. RR. Co. v. Gunning*, 80 P. 727 (Colo. 1905).
17. *Id.* at 728.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at 728–29.
22. *Id.* at 729.
23. *Id.* at 728.
24. *Id.* at 729.
25. *Id.*
26. *Id.*
27. See www.drgw.net/info/ColoradoMidland.
28. *Gunning*, 80 P. at 730.
29. *Id.*
30. *Id.* at 729.
31. *Id.*

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