



Of Hooves and Pedals

When Horses and Bicycles Didn't Mix

BY FRANK GIBBARD

From time to time, it is good to take a moment to look out one's office window onto the street. In Colorado's larger cities the street scene reveals an amazing diversity of locomotion. Cars, vans, and trucks share the streets with bicycles and scooters, pedestrians and pedicabs, skateboarders and Segways, motorcycles, powered wheelchairs, busses, and light rail. Everyone seems to be going somewhere, weaving, crossing, starting and stopping in a ceaseless dance. That all sorts of travelers usually manage to arrive at their destinations without incident is a testimony to the efficacy of traffic laws and customs that have developed over the past century, growing in tandem with the increased mobility of our modern world.

One thing one does not see much of these days—on big-city streets at least—is riders on horseback or horse-drawn carriages. Of course, there are still mounted police on patrol and elegant twilight coach-rides down Denver's Sixteenth Street Mall. But the street scene today is very different from just over a century ago, when transportation still depended heavily on the horse.

The mocking cry of "get a horse!"—addressed to drivers of early automobiles suffering from mechanical breakdowns—may have hid a sense of foreboding that conveyances powered by grass and gas would ultimately prove incompatible and that the gas-powered economy would prevail. But conflicts involving the use of city streets predate the hegemony of the automobile. As some early Colorado cases show, before automobiles arrived in force there were conflicts between horse-drawn vehicles and another popular and revolutionary mode of transportation: the bicycle.

Bicycling in Early Colorado

Horse-drawn carriages and steam-powered locomotives feature prominently in Colorado's early history. But since their beginning, Colorado's cities and towns have also been bicycle towns.¹ Bikes appeared in Colorado at about the same time they became popular elsewhere in the United States, in the late 1860s. In a pre-automotive age, bicycles fascinated for the

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increased mobility and speed they provided. Cyclists and spectators alike marveled that a rider could propel himself or herself at the speed of a trotting horse—sometimes faster.

Like early trains, early bicycles were not nearly as safe and comfortable as they later became. Riding any kind of early bike required fortitude. The rider of high-wheeled bikes in particular risked substantial injuries from collisions or falls. In the event of an accident, the high-wheeled rider was likely to go flying over the handlebars and land on his or her head—known as “taking a header.” Before John Dunlop patented the pneumatic bicycle tire in 1888,² the advent of improved road surfaces, and better suspension, bikes earned their derisive nickname: “boneshakers.”

That didn’t keep hardy Coloradans from embracing the new mode of transportation. References to “velocipedes” (an early form of bicycle) appear regularly in Colorado newspa-

pers beginning in the 1860s.³ In 1880, George E. Hannan opened the first bicycle shop in Colorado, on Lawrence Street. At first, bicycles were expensive, a plaything for the rich. But eventually, prices dropped, making bikes a part of popular culture.

Once it got going, the new fad did not discriminate. Victorian women embraced bicycling, riding in “bloomers” and enjoying the sense of liberation that came from self-propelled locomotion. Early photographs show the sport was popular among Denver’s African-American community. Young and old, rich and poor, soon everyone was cycling.


Bicycle clubs became common in Colorado. Riders were challenged to do “century rides,” riding 100 miles in a day. The bicycle scene was also plagued by “scorchers.” The term originally referred with some admiration to expert cyclists who liked to ride as fast as possible,⁴ but it later

became a derogatory term for reckless riders who disregarded safety on city streets in the interest of speed.⁵

One of the hazards of early bicycling was that speeding bikes tended to spook the horses with whom they shared the streets. Sometimes the cyclist got the worst end of horse-and-bike encounters. And, as will be seen, injured cyclists resorted to the Colorado courts.

Ina Aldridge Takes a Tumble

On August 14, 1899, Ina B. Aldridge was riding her bicycle along Wazee Street in Denver.⁶ When she reached the corner of Wazee and Fifteenth Streets, she turned onto Fifteenth, riding close to the curb on the right-hand side of the street. A horse and wagon had been riding behind her, and it turned onto Fifteenth Street as well. Her bicycle and the wagon were soon joined by a streetcar moving in the same direction.



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According to Aldridge's later complaint, "there was ample room for the wagon to pass between the [streetcar] and [Aldridge's bicycle]." ⁷ Unfortunately, though, when Aldridge "had gone to the distance of about 40 feet from the crossing, she was overtaken by the wagon, struck on the shoulder, knocked off her bicycle, and thrown to the ground by the right shaft of the wagon." ⁸ To make matters worse, while Aldridge was lying on the ground, the wagon's right rear wheel ran over her leg, breaking it.

The wagon was owned by the Adams Express Company. Adams Express was the FedEx or UPS of its day. ⁹ Aldridge sued Adams Express in Arapahoe County District Court. She argued the driver had negligently run her down. A jury granted a judgment in her favor. Adams Express appealed from the verdict to the Colorado Court of Appeals.



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Most of Adams Express's appellate issues failed. The company argued Aldridge's complaint should have provided more particulars concerning the wagon driver's negligence. The Court of Appeals held the complaint was sufficient. Adams Express argued there was insufficient evidence of negligence. The Court held there was enough to go to the jury. The company complained the jury was given a "majority verdict" instruction, which permitted a binding verdict by as few as nine of the twelve jurors. Though the Colorado Supreme Court had held a law permitting non-unanimous verdicts unconstitutional, the Court of Appeals found this error in Aldridge's case harmless, given that the jury's verdict was unanimous.

Two of Adams Express's issues related to Aldridge's status as a married woman. The company complained that the jury's verdict included medical and nursing expenses incurred by Aldridge. It argued her husband, rather than

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Adams Express, was responsible for these expenses. The Court rejected this argument, noting that “[u]nder our laws a married woman may contract debts and incur liability in the same manner and with the same effect as if she were sole.”¹⁰

Adams Express also complained of an inflammatory closing argument that had appealed to male jurors' sense of chivalry or modesty. Aldridge's counsel had argued:

Some of you, many of you, are married men and have families. How much would you take to have your wife run down in the public street, her leg broken, and her body covered with cruel bruises? How much would you take to have your wife run down in the public street and subjected to the curious gaze of the gaping crowd? How much would you take to have your wife knocked from her bicycle, rolled in the dirt in the public street, and humiliated and made the spectacle of a crowd on the public street?¹¹

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The Court held this language fell within the broad latitude permitted on closing argument. In addition, counsel for Adams Express had failed to object contemporaneously to the language, thereby waiving the issue for appeal.

The Court found merit, however, in one of Adams Express's appellate issues. The trial court had instructed the jury that if it believed the wagon driver had attempted to pass Aldridge and had struck her while attempting to so pass her, it should find in Aldridge's favor, unless it found the accident was the result of her own negligence. The problem with this instruction was that it made the company liable merely because the driver struck Aldridge while passing her, regardless of whether there was sufficient room for the driver to pass Aldridge on her bicycle, and regardless of whether his decision to do so was reasonable or prudent. It excused Aldridge from proving that the driver had passed her under circumstances that demonstrated

negligence. The Court therefore reversed the jury's verdict in favor of Aldridge.

A Mangled Bicycle

Another unusual accident on Fifteenth Street during this period did not involve personal injuries, only a mangled bike.¹² Frank P. Caughlin left his bike leaning against a curbstone while he went into a grocery store. A wagon driver making deliveries for the Campbell-Sell Bakery Company pulled up in front of the grocery store. Normally, the horses pulling his wagon were "very gentle and quiet, had traveled this same route every day, and had never been known to be frightened, or shown evidence of viciousness."¹³

The driver stopped within a few feet of the sidewalk, set the brakes on his wagon, and dropped a 56-pound iron weight strapped to the horses' bridles that was supposed to serve as a sort of anchor to keep the horses

from straying. He did not hitch the horses to a hitching post or other permanent object. After tethering the horses to the iron weight, he entered the store.

While he was in the store, the horses started up. They ran over the parked bicycle, damaging it. There was no evidence of what may have spooked them or caused them to run over the bike. Caughlin sued for the damage to his bicycle. The district court ruled in favor of the bakery and dismissed the case.

On appeal, Caughlin's negligence theory was founded on a famous British case that lawyers may recall from first-year torts class, *Rylands v. Fletcher*. In that case, as the Colorado Supreme Court described it, "the plaintiff was damaged by his property being flooded by water which, without any fault on his part, broke out of a reservoir constructed on defendants' lands by the defendants' orders and maintained by them."¹⁴ The Court explained the ruling in



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Rylands to be “that where a person lawfully brings on his land something which, though harmless while it remains there, will naturally do mischief if it escape out of his land, it is his absolute duty to keep it at his peril.”¹⁵

But the Court determined *Rylands* was inapplicable to Caughlin’s case. The possibility that the horses might break loose and cause mischief was not “the natural or probable result” of leaving them out on the street attached to the bridle weight.¹⁶ Instead, it was Caughlin’s burden to prove that under the circumstances, the driver’s actions in leaving the horses unhitched was negligent. The Court upheld the trial court’s finding “that the fastening or restraining of the defendant’s horses by means of the weight was a prudent and reasonable act of care upon its part.”¹⁷ Among other things, the trial court had properly considered a Denver ordinance that required that a team of horses left on a city street be fastened by a chain or strap to a stationary object or a weight of not less than 25 pounds. Accordingly, the Supreme Court upheld the judgment in favor of the defendant baking company.

The Coors Wagon Cometh

As in *Aldridge*, Albert Brock’s action against Adolph Coors involved a streetcar, a wagon, and a bicycle.¹⁸ When the accident occurred, Brock was pedaling his bicycle along Nineteenth Street in Denver. As he passed Curtis Street,

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he encountered the Coors wagon. The wagon was pulled by a two-horse team. Brock pulled to the side of the wagon and rode about three feet from the right-hand curb. The wagon was closer to the center of the street, about 15 feet from the curb.

According to Brock, he rode alongside the wagon for about a block and a half. He later estimated both he and the wagon were traveling about 8 miles per hour. As he approached Lawrence Street, he saw a streetcar headed south down Lawrence at a high rate of speed. Though he was in danger of colliding with the streetcar, Brock did not slow up at first, but after he had traveled about 10 feet farther, he began to slow down. Then the wagon driver cut him off by turning suddenly to the right and slowing at the same time. Brock had nowhere to go. His left shoulder collided with one of the horses, throwing him from his bicycle onto the street. As a witness for Brock put it, “the driver swung his horses to the right and knocked [Brock] off his wheel.”¹⁹

The wagon driver told a different story. By the time Brock ran into his horse, he said, the horses had already come to a complete stop to avoid colliding with the streetcar. Although his team may have veered slightly to the right in stopping, Brock still had plenty of room to have turned to the right up Lawrence Street, thereby avoiding the collision. A witness for Coors testified that Brock ran into the stopped

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wagon and “seemed to turn into the flank of the horse, striking the horse with his wheel.”²⁰

A jury found in favor of Brock, and Coors appealed. On appeal, the Colorado Supreme Court discerned the key question to be: who struck whom? Although Brock’s counsel stated it was not “of vital importance in this case which party struck the other,” the Court did not agree.²¹ The evidence concerning whether the horses struck Brock, or Brock ran into the horses, was in equilibrium and the jury could have decided the issue either way. This made it crucial that the jury be properly instructed.

The Court found fault with two jury instructions given at trial over Coors’s objection. First, “the court instructed the jury that it was admitted that the defendant, through his servant, was driving along Nineteenth street, and then and there came in contact with the plaintiff.”²² This instruction suggested to the jury that the Coors wagon struck Brock, not the other way around. But the testimony in favor of Coors showed just the opposite. The instruction prejudged an issue the jury was to decide.

Second, the court instructed the jury:

If . . . you find from the evidence that the driver of defendant’s wagon, while proceeding along side of or parallel with the plaintiff, from about Champa street to Lawrence street, and while so driving, seeing the plaintiff, or from the relative positions of the parties, should, in the exercise of ordinary care, have seen the plaintiff, drive [sic] his team and wagon on or over the plaintiff, and so run [sic] him down, you are from said facts authorized to find the defendant was negligent.²³

The Court held this instruction was erroneous and prejudicial to Coors, because it assumed there was evidence to the effect that the driver “drove his team on and over plaintiff,” when no such evidence had in fact been presented.²⁴ Based on this erroneous instruction, the Court reversed the judgment.

On remand to the district court, the case was retried. The jury again found in Brock’s favor, and Coors again appealed, this time to the Colorado Court of Appeals.²⁵ The Court noted that the evidence presented at the



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second trial differed to some extent from the facts reported in the Colorado Supreme Court's earlier opinion. Among other things, Brock's story at the second trial seems to have been more dramatic and detailed than at the first. Picking up at the point at which Brock saw the streetcar on Lawrence Street, he testified:

[H]e was unable to see the car sooner because of a building upon the corner of the block; that upon seeing the car he suddenly checked the speed of his wheel, intending to run behind the car and down on the right-hand side of Nineteenth street to his place of business; that defendant's team turned suddenly to the right toward plaintiff; that to save himself plaintiff turned into the curbing as close as he could, but the horses caught him at the corner of the curb, knocked him down, and trampled upon him and his wheel after he struck the ground; that there was nothing to prevent

the driver from seeing plaintiff and no obstructions to the left of the driver.²⁶

A witness for Brock "stated that she saw the driver whirl his horses to the right, throwing plaintiff under the team to the ground."²⁷

The driver's testimony seems to have been substantially the same as at the first trial. But the Court of Appeals noted that while some of the witnesses for Coors strongly supported parts of his testimony, other parts of that testimony were not supported by the witnesses. Significantly, "[s]ome of such witnesses testified that plaintiff was riding rapidly with his head down upon the handle bars, and that while so riding he ran into defendant's team."²⁸ Brock, it seems, may have been a scorcher.

On appeal, Coors raised several objections to the jury instructions, all of which the Court rejected. The Court held Coors was not entitled to an instruction based on an alleged City of Denver ordinance that required riders or

drivers of vehicles to keep within 15 feet of the corner of a curb when turning right into another street. Coors had failed to provide evidence that such an ordinance existed, and the Court could not take judicial notice of municipal ordinances.

Nor was Coors entitled to instructions that "it was plaintiff's duty at his peril to keep out of the way of defendant's team in case they should be suddenly turned to the right, either in stopping or meeting another vehicle, or in turning to the right into another street" or that "if the team was caused to swerve to the right, such swerving of the team to the right in stopping would be justifiable on the part of the driver, although the plaintiff were riding along by his side."²⁹ These instructions would have usurped the functions and province of the jury.

Coors had also requested an instruction that "if the driver of defendant's team did not know of plaintiff's situation in time to have avoided the collision, the verdict should be for the defendant."³⁰ This instruction was deficient because it "omitted the very important qualification that the defendant's driver might, by ordinary care, have known the plaintiff's situation."³¹

Coors also objected to the failure of one of the instructions to include its contributory negligence defense. But the Court noted that other instructions covered this defense, and the jury was admonished to consider the instructions as a whole.

Finally, the Court upheld the sufficiency of the evidence to support the jury's verdict. The evidence did not support a verdict in favor of Coors as a matter of law on the contributory negligence issue. Assuming the jury believed that the driver had turned abruptly to the right in stopping for no good reason, and that the horses had trampled on Brock after he was down, the evidence was sufficient to support their verdict in his favor.

Conclusion

Although horses and horse-drawn carriages have mostly disappeared from big-city streets, conflicts remain, now most notably between cyclists and motorists. As one recent commen-

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tator has remarked: “The conflict is not simply one between the self-interested automobile driver and the equally self-interested cyclist. Instead, prior decisions [by urban planners and other institutions] have set cyclists and drivers on a collision course, and they fight it out on the streets, in the courts, in bitterly contested online forums, and in the editorial pages of small-town newspapers.”³² Despite these conflicts, hope lies in the (very American) concept that there is room on the streets for everyone. 



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NOTES

1. This history is described in an informative and entertaining documentary film about the cycling experience in Colorado's early days. Kellett, *Victorian Cycles: Wheels of Change* (2010). A more general recent account of the history of bicycling in America is Guroff, *The Mechanical Horse: How the Bicycle Reshaped American Life* (U. of Tex. Press 2016).
2. See www.revolvvy.com/page/John-Boyd-Dunlop.
3. See, e.g., *The Colorado Transcript* (Golden) at p. 2, Col. 5 (May 5, 1869) (referring to velocipede race on Larimer Street in Denver); *Rocky Mtn. News* at p. 4, col. 2 (May 14, 1869) (referring to velocipede race in Ford Park).
4. See *Greeley Tribune* at p. 15, col. 5 (Sept. 9, 1891) (“[T]he faster men wanted to get over the road in shorter time. Those three ‘scorchers,’ as such men are known in cycling circles, started on ahead and ere many miles had been made were completely out of sight.”).

5. See “Cops on Bikes,” *Herald Democrat* (Leadville) at p. 1, col. 6 (Dec. 11, 1895) (noting bicycle police in New York City had been given the duty “to warn scorchers and arrest them if necessary.”); *Pueblo Chieftain* at p. 2, col. 1 (Jan. 8, 1896) (deploring proposal to pave Main Street with asphalt, because “it will be so dangerous on account of the bicycle scorchers that nobody’s life will be worth a minute’s insurance”).
6. The facts are taken from *Adams Express Co. v. Aldridge*, 77 P. 6 (Colo.App. 1904).
7. *Id.* at 9.
8. *Id.*
9. Adams Express, founded in 1854, is one of the oldest continuously existing companies in the United States. It has had a colorful history. Over the years it has survived labor troubles, fires, and in the 1860s, an infamous train robbery. Currently, it specializes in diversified investments rather than package deliveries.
10. *Adams Express*, 77 P. at 10.
11. *Id.*
12. The facts are from *Caughlin v. Campbell-Sell Baking Co.*, 89 P. 53 (Colo. 1907).
13. *Id.*
14. *Id.* at 54.
15. *Id.*
16. *Id.*
17. *Id.* at 55.
18. The facts are from *Coors v. Brock*, 96 P. 963 (Colo. 1908).
19. *Id.* at 964.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 965.
24. *Id.*
25. *Coors v. Brock*, 125 F. 599 (Colo.App. 1912).
26. *Id.* at 600.
27. *Id.*
28. *Id.*
29. *Id.* (internal quotation marks omitted).
30. *Id.*
31. *Id.*
32. Longhurst, *Bike Battles: A History of Sharing the American Road* 4 (U. Wash. Press 2015).

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