

about ten minutes, just long enough to unload the loads of wood. The merchandise was to be discharged in the depot and the lumber up above the depot. I did not intend to uncouple my train where I stopped as Mr. Skelton was following me and he was to unload his wood where I was to unload mine. If the other train had not been following me I should not have uncoupled anyhow, as I had the lumber cars behind the wood cars, and I wanted to get them unloaded. I did not give any order or signal to pull any pin. My engine and brakes were in perfect order. Every car in my train had a brake. I know of two cars whose brakes would hold; the first wood car's brakes would hold it and the second wood car had a good brake, in fact, better than the first ones. In regard to the others, I could not say, as they were broke up. I have given instructions for the boys to block the wheels, but not in this case. The wheels are blocked as a matter of precaution. My engine can hold more cars on a grade than I can pull, and she could hold those cars on any part of that grade. I do not allow any of my men to pull the pin without orders. At Spreckelsville I give orders to the men to pull the pin so that I can go up to Paia. They do so without a signal. I tell them first how many I want out off and where I want them out off; they do so without the engine coming to a full stop. I give a signal to them by motion of hand. They cannot pull the pin without my slacking up speed. I came to a stop, a sudden one, and looking back I saw the wood cars moving down hill. I called out "who in the name of God pulled that pin," or words to that effect. I called to Charlie to couple the cars but he could not get at them to do so; then I called to Joe. I know that the cars were not more than 10 feet from where I was when I caught up to them and tried to re-couple. I thought Charlie gave a signal that they were coupled and I stopped the engine, but I saw that they were not and I went after them again. Nicholas passed over from the merchandise car to the passenger car; he tried to couple but could not. Keala the fireman went forward to try to couple but could not. I then followed the train down to within 200 yards of where the accident took place. Where I stopped was where my wife and baby jumped off. I could not have approached the train any nearer with safety. I blew the whistle continually while following the runaways so that the other train could hear it on the flat but it was of no avail. I left cars on the grade held by the brakes last year when bringing up lumber for Spreckel's flume, all along the road from Keau's to the depot. A train of sugar got away from the depot before last June, 8 cars of Waiahee sugar. The men would load up a car of sugar and then push it out of the depot and then would load another and push it out. 5 or 6 were loaded this way and the cars were so heavy the brakes would not hold and they got away. About 4 years ago a car loaded with a water tank was left at the depot at noon with the brakes down. I was at Kahului and saw it coming down on the flat. Somebody must have taken the brake off as it would not have started of its own accord. John Ezra was station master at the time. No cars have ever run off the track since I have been on the road. Palea told me himself that he had pulled the pin.

Cross-examined:—I left the car with water tank on that got away 4 years ago. I know that the brakes were set. I saw the car afterwards on the flat and the brakes were off. Under my instructions they blocked the wheels occasionally as an extra precaution in case that if the brakes would not hold they would not get away. The men under me never act without my orders or against them. In this particular case, when the accident happened, I did not instruct the men to block the wheels. They did so after the cars started trying to stop them. Did not test the brakes to my cars before I started for Wailuku on that day. Since I have been on the road I have tested the brakes on the cars. This was about an average train on this day one car more than I usually take up. I did not test the brakes that time as I knew the engine would hold the train whenever I stopped. I tested some brakes in Wailuku about ten days before accident. I test them in the depot to see if they will hold as I want to leave them in the house. It is a pretty heavy grade from the beach to Wailuku, that is the reason we test them as the engine is taking water, and as the cars are loaded they are pushed out of the depot and the brakes put on. If they don't hold, we block the wheels. I know that the 1st and 2nd wood car brakes were good because after the accident I coupled on and took them up to Wailuku depot. I could not say if the brakes were down when I coupled on at the scene of the wreck, if they had been down the concussion would have taken the brakes off. I took the cars down to Kahului two days after the accident. When I tested the brakes the cars were not loaded. A loose brake would hold an empty car when it would not hold a loaded one. I am Master Mechanic on the road but don't have the care of the cars. It is Mr. Bourguie's duty to see if the brakes on the cars are in order. I can tell how a brake when it gets loose can be fixed so that it will hold. It does not cost much time or labor to repair a brake so that it will hold. It would take longer to put in a new brake block than it would to repair a loose brake so as to hold. There is no one on that road whose business

it is to see that the brakes are in order. In case of a car being broken I tell him, or any one else does, and he repairs it. If all the brakes on a train of cars are out of order and Bourguie is not notified to repair them they are sent out as they are. Mr. Bourguie is the car repairer. I testified at the Coroner's inquest as you read it. It is not Mr. Bourguie's duty to see if they are in order but he is to repair them when he is notified to do so. There is no one whose duty it is to inspect the cars to see if they are in order. If the brakes are out of order and it is necessary to stop a train on a grade I would stop it first with the engine and then block the wheels with ties. It might happen that a pin would come out by jolting. I do not remember it happening on this road. I do not know of its happening to Skelton's train. I was away over two months. Do not know it happened on the day of the accident. Skelton's brakes would hold whether the cars were loaded with wood or not. If the brakes were out of order and the cars were loaded with potatoes and the cars got away the only thing to do would be to catch the train with a locomotive. I could not couple on the runaways. Can't tell the reason. I coupled on to the same two cars when they were standing still. When I coupled on to them the wood was off and the cars were about the same level. I act as engineer and conductor so far as taking sugar but for no other kind of freight. It is not my duty to see whether the train is in order or not when it goes out on the road. It is the duty of the conductor and brakemen to see that the cars are in order. It is Charlie's duty, the man who was on the first wood car. He has been there 3 years now. He does not tell me when to leave or where to stop except when he says we have freight to leave at such and such a place, then I say O. K. Charlie, and stop where he wants. I am under his orders to this extent, that when he says he has freight for this place I stop as he wants and leave it. He tells me when he is ready to go out when the cars are ready. It is the duty of any of the train men to see if the cars are in order. It was the duty of Lia, one of the train men to see if his car was in order and if it was not to report it. I look out for the management of the men when they are working at the station. That is my part of the conductor's duty. My fireman does not do conductor's duty but he works when required. When I make signal to pull pin I put up my hand (shows the Court how it is done).

By W. O. Smith:—The locomotive never leaves the depot without being in good order. No locomotive is allowed to go out on that road unless able to hold the load she carries. Any number of cars she is able to pull she is able to hold, she can hold them without any brakes being used. It would be impossible for a car with the running gear out of order to go out of the depot without somebody seeing and reporting. When I coupled on to the cars that ran away I coupled on with the engine and not with the passenger car. While the car was standing at the depot with the water tank aboard, (the car that ran away before) and brakes set, the brake could not have been let loose without somebody letting it loose.

By Attorney General:—If anything was the matter with the wheels of the cars I would know it before starting out by its jumping when the wheel turned around. I was employed on the Amassar Michigan, U. S. road where the trains were not examined before leaving the station. I was fireman on the engine. It is so long ago I do not remember if the passenger cars were inspected before leaving the depot. There were no wheel-tappers. I am positive that the cars were not examined at either terminus.

T. W. Everett, stated:—On the Saturday after the accident Mr. Parker showed me two cars at Kahului. He set the brake in one car and started the engine and the wheel on that car did move. He did this he said so as to show me that the brakes were not down at time of accident. I did not see the wheels of the other car tried. I cannot recollect exactly what Parker said. He said these two cars were left from the smash up. One he showed me was in order. The other he said was not in order, i.e., the brakes.

Palea makes a statement to the Court. He wishes to say something about this case. He wants to tell the truth.

Palea Mahi (k) sworn, stated:—When we left Kahului we came up to where we stopped to unload the wood. Parker stopped the train. When the train stopped he called out for Joe to jump down and put sticks of wood under the wheels. Then we all jumped down, four jumped down on one side of the train and I on the other side. I sat down and looked under the cars and saw them putting in sticks of wood. I called out to them to put in more sticks so that it would hold. Then I stood up and didn't see any more of them. Then I heard Parker call Charlie. I told Parker that Charlie was behind. Then Parker slacked or backed up the engine. When Parker backed up, the sticks of wood under the wheels slid forward then they stopped. Then Parker started the train ahead again. As the train was moving ahead the hind wheels came and struck the pieces of wood. Then Parker backed again until the train stopped. Then he called for Charlie again. I again told him that Charlie was behind. I was standing near the engine. Then Parker

told me "Palea pull the pin" and made a motion with his hand at the same time, but I did not pull it then. I stooped down and looked under the train to see if the wood was sufficient to hold the train. Then I stood up and saw Parker motion me to pull the pin, I did so. Then the engine with the other cars started ahead. Soon after one of the sticks holding the cars broke and the train started away. When Parker saw that, he gave chase after them and struck the runaways with his cars and started them off faster. That is all I know about it. Then I ran to the scene of the wreck.

By W. O. Smith:—When I pulled the pin I left it in the passenger car. I testified before to a mistake. I said that the passenger car was next to the engine, whereas it was the reverse. When Parker called out "Palea" he said something in English and made a motion with his hand which I understood meant to pull out the pin.

By Attorney-General:—It is a usual thing for me to carry Paia on the train but this day I had fish. I usually work on that train and occasionally do as Parker wants me. I work my passage.

By W. O. Smith:—There is only one man whose fare is rebated. He takes a large lot of Paia for the plantations. All the other men have to pay. Parker does not not make me pay because I work.

Parker (recalled) by W. O. Smith:—When a man has 40 or 50 bundles paia he is entitled to a free ride to look after his freight. That is all I know about Palea's being exempt from paying fare. I do not recollect of seeing Palea from time of leaving Kahului till at the wreck. He did not in any way work for the company. But he has sometimes worked there helping to load or unload.

Nolle pros, entered in the case of Pierre Bourguie and Palea Mahi. In the case of Ernest L. Parker he is discharged.

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