

REPORT OF THE COMMITTEE APPOINTED BY THE
GOVERNMENT OF INDIA TO CONSIDER THE
REVISION OF RAILWAY RISK NOTES,

1 9 2 2.

(Chairman: Mr. T.V. Seshagiri Ayyar.)

Report of the Committee appointed by the Government of India to consider the revision of Railway Risk Notes.

CHAPTER I.

INTRODUCTORY.

The appointment of the Committee to consider the revision of Railway Risk Notes was the outcome of a discussion on the subject in the Legislative Assembly in March 1922 when the following Resolution proposed by Rao Bahadur C. S. Subrahmanayam was adopted :—

“ This Assembly recommends to the Governor General in Council to appoint a Committee of officials and non-officials with a majority of Indian non-officials to consider the revision of Railway Risk Notes.”

2. In pursuance of the terms of this Resolution, a Committee constituted as follows was appointed by the Government of India :—

1. Mr. T. V. Seshagiri Ayyar, M.L.A., *Chairman.*
2. Rao Bahadur C. S. Subrahmanayam, M.L.A.
3. Mr. Manmohandas Ramji, M.L.A.
4. Mr. A. M. Clark, Member, Railway Board.
5. Mr. C. V. Bliss, C.I.E., Secretary, Indian Railway Conference Association.

3. As a preliminary measure the Committee decided to invite the views of Local Governments; Railways, Chambers of Commerce and other public bodies on the form, construction and suitability of the Risk Notes now in use.

A copy of the letter circulated for opinion and of the replies received are annexed to this report and it will be seen how varied and influential were the interests consulted. We wish to express our great indebtedness to all who were good enough to favour the Committee with their views.

4. The Committee commenced their sittings on the 24th May and held fifteen meetings between that date and the 2nd July when owing to the illness of two of the members, the Committee dispersed. It met again on the 31st August and the 5th and 15th September and the report was signed on the 16th September.

5. The replies received to the letter referred to in paragraph 3 set forth fully the views of the different public bodies interested and we did not therefore consider it necessary to call for oral evidence. We took advantage, however, of the presence in Simla of Mr. Purshotamdas Thakurdas, President of the Indian Merchants' Chamber and Bureau Bombay, of Mr. Khaitan, Secretary of the Marwari Association Calcutta and of a committee of railway traffic officers who were sitting at the time, to take their evidence and we are much indebted to these officers for the valuable assistance given.

CHAPTER II.

RECOMMENDATIONS.

6. Before proceeding with our recommendations it is necessary to indicate briefly the existing Law regarding the responsibility of Railway Administrations as Carriers.

7. Prior to 1890 when the Railway Act was revised there was some doubt whether railways were insurers of goods under the Carrier's Act of 1865 or merely bailees under the Contract Act (IX of 1872). Differing views had been taken by the High Courts in Calcutta and Bombay but the matter appears to have been settled by the passing of the Indian Railways Act IX of 1890, section 72 of which definitely states that nothing in the Common Law of England or in the Carrier's Act of 1865 regarding the responsibility of common carriers with respect to the carriage of animals or goods, affected the responsibility of carriers by railway. The view taken by the majority of judges of the various High Courts is that Railways are only liable as bailees under the Contract Act; that is, their responsibility is limited to taking as much care of the goods booked to them "as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed." It is this responsibility only which is affected by the execution of a risk note and it is on this view of the position of Railways that we have framed our recommendations.

8. The Risk Notes at present in force are as under:—

Form A.—Used when articles are tendered for carriage which are already in a bad condition or are so defectively packed as to be liable to damage in transit.

Form B and H.—Used when sender elects to despatch at a special reduced rate articles for which an alternative ordinary or "railway acceptance" rate is quoted.

Form C.—Used when at sender's request open wagons are used for goods liable to damage when so carried.

Form D and G.—Similar to Forms B and H but used for explosives or dangerous goods.

Form E.—Used when elephants, horses, etc., above a certain value are tendered without payment of a percentage on the value.

Form F.—Used when horses, etc., are tendered for despatch in cattle trucks instead of horse wagons.

Form X and Y.—Used when sender elects to despatch excepted articles without payment of a percentage on the value.

9. The numerous representations received by us from public bodies dealt for the most part with Risk Note A, B and H. They expressed, almost without exception, great dissatisfaction with the language and application of these Risk Notes and showed that there is a general demand that the liability of railways for goods carried at owner's risk should be increased. We have considered all the forms now in use and are of opinion that no alterations are necessary in Forms C, E, F, X and Y. The forms which we recommend should be revised are A, B, H, D and G and we deal with these *seriatim*.

Risk Note 'A'.

10. As regards Risk Note Form 'A' the complaints received refer rather to the abuse of the form than to its actual wording. No alteration in the phraseology employed will prevent abuse of the form and we are unable to recommend its total abolition. But while it is necessary that railways should be protected from losses due to causes outside their control, it is equally necessary that they should restrain their staff from demanding the execution of the Risk Note without justifiable cause: we consider that action should be taken in this behalf.

11. The form now in use relieves the railway from "all responsibility for the condition in which the goods may be delivered to the consignee at destination and for any loss arising from the same." The only alteration we propose is the addition of the following words after those quoted, "except upon proof that such loss arose from misconduct on the part of the Railway Administrations' servants."

12. We shall refer later to the question of the necessity for taking form 'A' in addition to form 'B' if goods are not properly packed; it is sufficient to point out here that in view of the alterations we suggest in form 'B' the execution of 'A' in addition will no longer be necessary in respect of goods

carried at owner's risk rates. We may note that we have received complaints that a distinction is made between Indian and European packers and we are glad to have the assurance of railways that no such distinction now exists. We would suggest that, so far as possible, before fresh packing conditions are adopted by railways the principal Chambers of Commerce and Mercantile Associations interested should be given an opportunity of expressing their views.

13. The most important question before the Committee is the revision of Risk Note 'B' and 'H.' These two forms are used when a consignor wishes to despatch at a specially reduced or owner's risk rate articles for which an alternative, higher railway risk rate is quoted. Form 'B' is a special contract for one consignment and form 'H' a general contract covering all consignments booked by a single consignor.

14. Prior to 1907 when the forms were revised these Risk Notes relieved the railway from all responsibility for any loss, destruction or deterioration of or damage to the goods booked from any cause whatever. In 1907 as a result of representations from the mercantile community the conditions were revised and the existing forms introduced which make the Railway Administrations liable "for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of the Railway Administration or to theft by or due to the wilful neglect of its servants"; subject however to the proviso that the term wilful neglect should not be held to include "fire, robbery from a running train or any unforeseen event or accident."

15. Repeated demands have been made by the trade for a further modification of the terms of this risk note. The main reasons for demanding a revision may be summarized thus:—

- (i) that the difference between railway risk and owner's risk rates is so great that traders have practically no choice but to book their goods at owner's risk;
- (ii) that it is unfair to place on the consignor the burden of proving that loss is due to wilful neglect on the part of the Railway Administration or its servants, as it is practically impossible for him to prove this;
- (iii) that to limit the liability of a railway for loss, to the loss of a complete package or consignment, indirectly encourages theft by railway servants;
- (iv) that railways are prone to attribute losses to robbery from running trains without adducing evidence in support of this.

16. On the part of the Railways it is contended:—

- (i) that the contract is a voluntary one and the trader if he is not satisfied with the terms has the alternative of booking his goods at railway risk. That the reduced rates are quoted for other considerations than the mere acceptance of the risk of carriage by the sender, *e.g.*, in consideration of goods being despatched in large quantities or for long distances.
- (ii) That any loss sustained by thefts and pilferage must be less than the gain obtained by booking at the reduced rates as otherwise it would obviously be to the advantage of traders to book at the railway risk rates. That the contract is therefore an advantageous one on the traders' side and his demands for further concessions are unjustifiable.
- (iii) That the execution of the risk note by the consignor implies the acceptance of the *onus probandi* in case of loss and therefore constitutes one of the considerations for a reduced rate. That if a railway were to admit that every loss is due to its own wilful neglect unless it can prove the contrary it would be impossible to continue to carry goods at the existing owner's risk rates.

(iv) That the existence of organised gangs of thieves who make a living by robbing trains is a fact which cannot be ignored; and since the prevention of such thefts is beyond their powers railways should be exempted from liability therefor. Further that the term "robbery" affords them little protection since it is necessary in order to escape liability to prove that force or restraint was used and that the word theft should therefore be added to or substituted for the word "robbery" in the risk note.

(v) That the term wilful misconduct should be substituted for wilful neglect as the latter term is indefinite.

17. We shall take the question of the onus of proof first. It has been generally held by the High Courts* of this country that it lies on the person claiming compensation to prove that any loss was due to wilful neglect and that in the absence of such proof the railway is free from responsibility; but in

*"Sheobarat and other v. Bengal and North-Western Railway, Calcutta Weekly Notes, XVI (page 766).

"East Indian Railway v. Kanak Behari Haider, Calcutta Weekly Notes (XXII, page 622).

"Bombay, Baroda and Central India Railway v. Ranchhodlal and Company, Bombay Law Reporter XXI (page 779).

"South Indian Railway v. Nathmal Behari Lal, Indian Law Reports, Madras, series XXXIX."

case against the defendant company it was for them to offer some reasonable explanation in order to escape liability.

18. In England—the only other country regarding which we have been able to obtain information on the subject—the burden of proof appears to be on the owner to prove wilful misconduct of the company's servants, except in certain circumstances in which the Company specifically accepts the burden of proof. The House of Lords in the case of *H. G. Smith v. Great Western Railway Company*, (February 1922), held that misconduct could not be inferred from the mere failure of the Company to account for the goods and that if no circumstances from which such misconduct could fairly be inferred were disclosed from the company's inability to account for the loss, the burden of proving such misconduct still lay upon the owner. In this case the appellants were unable to elicit from the respondents any information about the missing goods beyond the fact that there was no record of their receipt at destination, and in delivering judgment Lord Buckmaster said:

"It is perfectly true that this results in holding that the apparent protection afforded to the trader is really illusory; it practically gives him no protection at all for it is often impossible for the trader to know what it is that has caused the loss of his goods between the time when he delivered them into the hands of the railway company's servants and the time when they ought to have been delivered at the other end of the journey. The explanation of the loss is often within the exclusive knowledge of the Railway Company and for the trader, to be compelled to prove that it was due to wilful misconduct on the part of the Railway Company's servants is to call upon him to establish something which it may be almost impossible for him to prove."

19. This we think puts the matter very fairly from the traders point of view. It is clear that he is not in a position to prove how the loss of his goods has occurred and if a railway fails to deliver goods entrusted to it, we consider that it is for the Railway authorities to offer some reasonable explanation in order to relieve themselves from liability.

20. After full consideration of all the aspects of the question we have come to the conclusion that in the following cases—

(a) non-delivery of the whole of a consignment or of the whole of one or more packages forming part of a consignment, properly packed and fully addressed; unless such non-delivery is due to accidents to trains or to fire;

- (b) pilferage from packages of merchandise properly packed, that is packed in accordance with instructions laid down in the Goods Tariff or, where there are no such instructions, protected otherwise than by paper or other packing readily removable by hand; provided the pilferage is pointed out to the servants of the Railway Administration on or before delivery,

the Railway Administration should be required to lead evidence to show how the consignment was dealt with throughout the time it was in its possession or control. The result of this proposal would be that if misconduct were fairly inferable from the circumstances disclosed by the Railway Administration's inability to account for the loss of the goods, the Railway would be held responsible; but if the evidence were equally consistent with the Railways liability or non-liability, the burden of proving misconduct would be on the claimants. We hope that these alterations may obviate the complaints made that Railways refuse to give information showing how a consignment has been dealt with while in their hands and that they may result in reducing litigation.

21. We further propose that Railways should be held responsible for pilferage from packages properly packed. We recognise that this will place a considerable additional burden on railways but if they are held responsible for the loss of a complete package there is no reason why they should not be equally held responsible for the contents of the package. Moreover, we think it is opposed to public policy to allow a railway to contract out of liability for the misconduct of its own servants. It has been suggested that this responsibility might be limited to the loss of more than a certain percentage of the contents, but such a condition is open to obvious objections. We recognise that if Railways are to be held liable for pilferage they will be entitled to enforce proper packing conditions and this will, we think, be to the advantage of every one concerned. There is no doubt that the extensive pilferage which at present takes place is to a great extent rendered possible by the indifferent methods of packing common in this country.

22. We have provided in the revised form of Risk Note for particulars of packing to be shewn and there will not therefore be any necessity for the execution of Risk Note 'A' in addition to Risk Note 'B,' as the particulars given will show whether the goods were packed in accordance with the conditions of the Risk Note or not. Particulars of packing cannot of course be shewn on Risk Note 'H' and, in cases where a sender fails to pack goods booked under this Risk Note in accordance with instructions, it will be necessary for him to execute Risk Note 'B' for such consignments. It seems probable that a sender who enters into a general contract for the despatch of his goods at owner's risk will be careful that they are properly packed and the necessity for the execution of a separate Risk Note in form 'B' should not often arise.

23. The question whether the liability of Railways under Risk Note 'B' should be limited to "neglect" of their servants as proposed in certain representations from the public or to "wilful misconduct" as asked for by Railway Administrations, has received our careful consideration. The term now used is "wilful neglect" and for this we propose to substitute the term "misconduct." The alteration is of considerable importance and we therefore give our reasons fully.

24. The term "wilful ^{neglect} ~~misconduct~~" is inexact and is liable to misinterpretation. In the connotation used in the existing form of risk note it is, we think, equivalent to misconduct, for if a railway servant is *wilfully* neglectful of the duties he is paid to perform or of the interests he is paid to protect, he is clearly guilty of misconduct. It is however, open to doubt whether courts would place this interpretation upon the words. In the case of *Shepard and Company v. Midland Railway* (114 Times Law Report 515), Lush, J. in his judgment said:—

"wilful negligence is only negligence—as has been said of "gross negligence"—with a vituperative adjective before it. It is negligence after all, whether you call it "wilful," "gross," "ordinary," or use any other adjective."

25. The question for consideration, therefore, is whether the term used in the risk note should be "neglect", "misconduct" or "wilful misconduct". We do not think it would be right to hold Railways responsible for mere negligence in the case of goods booked at reduced owner's risk rates. If we did so, there would be little difference between the liability of Railways for goods carried at railway risk and for goods carried at owner's risk. Railways in India as already shown are not insurers of goods but are merely bailees and their responsibility is therefore limited even in the case of goods booked at railway risk. Further we do not think any large proportion of the losses incurred are due to mere neglect and we think therefore that the interests of traders will be sufficiently safeguarded if the liability of Railways is limited to the misconduct of their servants. We do not consider it necessary to go so far to limit such liability to "wilful" misconduct.

26. With regard to the question of robbery from running trains we do not consider that any special reference in the risk note to this particular cause of loss is necessary. Under our proposals Railways would be required to lead evidence to account for the loss of goods, and their liability or non-liability would be determined by the evidence.

27. We have substituted the words "non-delivery" for 'loss' in the exception for which Railways may be held liable, as there is some doubt whether the word 'loss' in the existing risk note does not include the terms 'destruction, deterioration or damage' and we consider that any liability of Railways under "owner's risk" conditions of carriage should be limited to non-delivery and pilferage.

28. The only other point to which we need refer in connection with Risk Notes 'B' and 'H' is the question of the great difference that is said to exist between railway risk and owner's risk rates. This matter has been brought prominently to our notice by many members of the trading community by whom it is asserted that the difference is so great that they have no option in the face of competition, but to book at the lower rates. On the Railway side it is urged that where special rates are quoted, the acceptance of the risk by the owner is only one of the considerations for which the lower rate is quoted, other considerations being that goods are consigned in large quantities or for long distances, that they are loaded and unloaded by sender and consignee, etc. The question is undoubtedly one of very great importance but we do not consider that it falls within the terms of our reference and we therefore refrain from expressing any opinion. The question is one for decision by the Rates Advisory Tribunal if and when it comes into existence.

**Risk Notes
'D' and 'G.'**

29. The other risk notes which remain to be dealt with are forms 'D' and 'G.' These forms are similar to 'B' and 'H' but are used for dangerous explosives or combustible articles. We have altered these to be in conformity with the revised forms 'B' and 'H' except that we have not defined the term "properly packed" as packing conditions for dangerous goods are laid down by Government.

Summary.

30. Our recommendations may be summarized as follows:—

Risk Note 'A.' We recommend that the form should be amplified to make Railways liable for loss, damage, etc., upon proof that such loss is due to misconduct on the part of their servants.

Risk Notes 'B' and 'H,' 'D,' 'G.' We recommend that the forms should be so modified that in cases of non-delivery or pilferage of goods from consignments properly packed, Railways should be required to lead evidence to show how the goods were dealt with while in their possession or control. We also recommend a modification of the forms which will obviate the necessity for taking form 'A' in conjunction with form 'B.'

Risk Notes forms 'C,' 'E,' 'F,' 'X' and 'Y.' We recommend that these forms should be left unaltered.

31. We have embodied our proposals in draft forms of risk notes appended to this report.

32. The question which we have been investigating is one of great complexity. The views of the railways and the traders are to a great extent irreconcilable and there is much that can be fairly urged on both sides. Our recommendations are necessarily therefore in the nature of a compromise but we believe that the forms proposed will meet the main objections to the existing risk notes without unduly increasing the burden of Railways.

33. The other Members of the Committee wish to place on record their appreciation of the great assistance rendered to them by Mr. C. V. Bliss, not only as a colleague with them in their deliberations but also in the responsibility which he undertook in an honorary capacity as Secretary to the Committee.

T. V. SHESHAGIRI AYYAR, *Chairman.*

C. S. SUBRAHMANYAM, *Member.* subject to note.

MUNMOHUNDASS RAMJI, *Member.* Do.

A. M. CLARK, *Member.* Do.

C. V. BLISS, *Member and Secretary.* Do.

Simla, the 16th September 1922.

We have signed the report subject to the following reservation with regard to paragraphs 12, 22 and 30 :—We are unable to agree that the entry by the station staff of the description of packing, at the end of the Risk Note (form 'B.') after the senders signature, will of itself obviate the necessity for taking form 'A' when goods are not properly packed. In practice, however, we hope that the execution of form 'A' in addition to form 'B' will prove unnecessary.

A. M. CLARK.

C. V. BLISS.

From the statements, placed before us, of the public and the trade, it is quite clear that the immunity, which the Risk Note Forms, particularly 'A,' 'B' and 'H' gave the Railways, has resulted in tending to encourage negligence and dishonesty among Railway servants in dealing with the articles consigned. Very strong language is used in these statements against the Railway servants. The time has now come for the good name of the Railways, which after all are public concerns, financed and supported by Government, that the obligations of the Railways to the public should be made clearer and much less illusory than it has hitherto been. The common people of this country treat the Railways as a department of Government, and the odium created by the conduct of the Railways towards goods and passengers reflects upon the Government as well. Taking things as they are in this country it cannot be said that the people are altogether wrong. I trust that when these Risk Note Forms are revised we shall have an opportunity of considering whether the alterations effectuate our recommendations. My reading of the earlier files on this question makes me feel that the present Risk Note Form has not carried out the desire expressed by Sir John Hewitt in one of the files. Much of the trouble with which we are now faced is due evidently to the draftsman of Risk Note 'B'.

C. S. SUBRAHMANYAM.

I agree with the above remarks.

MUNMOHUNDASS RAMJI.

Proposed Form 'A.'

RISK NOTE FORM 'A.'

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when articles are tendered for carriage which are either already in bad condition or so defectively packed as to be liable to damage, leakage, or wastage in transit).

_____ STATION.

_____ 192 / .

WHEREAS the consignment of _____ tendered by ^{me}/_{us} as per forwarding order No. _____ of this date for despatch by the _____ Railway Administration to _____ station, and for which ^I/_{we} have received Railway receipt No. _____ of same date, is in bad condition ^{and}/_{or} liable to damage, leakage, or wastage in transit as follows:—

^I/_{we}, the undersigned, do hereby agree and undertake to hold the said Railway Administration over whose Railway the said goods may be carried in transit from _____ station to _____ station harmless and free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same except upon proof that such loss arose from misconduct on the part of the Railway Administration's servants.

This agreement shall be deemed to be made separately with all Railway Administrations or transport agents or other persons who shall be carriers for any portion of the transit.

WITNESS.

Signature of sender _____

(Signature) _____

Rank or

Father's name _____

(Residence) _____

Caste _____ Age _____

WITNESS.

(Signature) _____

Profession _____

(Residence) _____

Residence _____

NOTE.—The above form is, for the convenience of the public, translated into the vernacular on the reverse, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation.

RISK NOTE FORM B.

(To be used when the sender elects to despatch at a "special reduced" or "owner's risk" rate, articles for which an alternative "ordinary" or "risk acceptance" rate is quoted in the tariff).

..... STATION.
..... 192 .

Whereas the consignment of.....
..... tendered by
me as per Forwarding Order No. of this date, for
us despatch by the Railway Administration to
..... station, and for which I have received Railway
Receipt No. of same date, is charged at a special reduced
rate instead of at the ordinary tariff rate chargeable for such consignment

I, the undersigned, do, in consideration of such lower charge agree and undertake to hold the said Railway Administration harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever except upon proof that such loss, destruction deterioration or damage arose from the misconduct of the Railway Administration's servants; provided that in the following cases

- (a) Non-delivery of the whole of a consignment or of the whole of one or more packages, forming part of a consignment, properly packed and fully addressed; unless such non-delivery is due to accidents to trains or to fire,
- (b) Pilferage from packages of merchandise properly packed, that is packed in accordance with instructions laid down in the goods tariff or where there are no such instructions, protected otherwise than by paper or other packing readily removeable by hand, provided the pilferage is pointed out to the servants of the Railway Administration on or before delivery,

the Railway Administration shall be required to lead evidence to show how the consignment was dealt with throughout the time it was in its possession or control, but if no circumstances from which misconduct can fairly be inferred are disclosed from the inability of the Railway Administration to account for the non-delivery or pilferage, the burden of proving such misconduct shall lie upon the consignor.

This agreement shall be deemed to be made separately with all Railway Administrations or transport agents or other persons who shall be carriers for any portion of the transit.

WITNESS.

(Signature)..... Signature of sender.....
(Residence)..... Rank or { Fathers' name.....
Caste..... Age.....

WITNESS.

(Signature)..... Profession.....
(Residence)..... (Residence).....

Note.—The above form is, for the convenience of the public, translated into the vernacular on the reverse, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation.

To be filled in by Goods Clerk

Description of packing.....

..... Goods Clerk.

Date.....

RISK NOTE FORM D.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when the sender elects to despatch at a "special reduced" or "owner's risk" rate dangerous, explosive or combustible articles for which an alternative "ordinary" or "Risk acceptance" rate is quoted in the Tariff.)

_____ STATION.
_____ 192 .

Whereas the consignment of _____
_____ tendered by
 $\frac{me}{us}$ as per Forwarding Order No. _____ of this date, for
despatch by the _____ Railway Administration to
_____ station, and for which $\frac{I}{we}$ have received Railway
Receipt No. _____ of same date, is charged at a special reduced
rate instead of at the ordinary tariff rate chargeable for such consignments
 $\frac{I}{we}$, the undersigned, do, in consideration of such lower charge agree and under-
take to hold the said Railway Administration harmless and free from all
responsibility for any loss, destruction or deterioration of, or damage to, the said
consignment from any cause whatever except upon proof that such loss
destruction deterioration or damage arose from the wilful misconduct of the
Railway Administration's servants; provided that in the following cases

- (a) Non-delivery of the whole of a consignment or of the whole of one
or more packages, forming part of a consignment, properly packed
and fully addressed; unless such non-delivery is due to accidents
to trains or to fire,
- (b) Pilferage from packages properly packed, provided the pilferage
is pointed out to the servants of the Railway Administration on
or before delivery,

the Railway Administration shall be required to lead evidence to show how
the consignment was dealt with throughout the time it was in its possession or
control; but if no circumstances from which misconduct can fairly be inferred
are disclosed from the inability of the Railway Administration to account
for the non-delivery or pilferage, the burden of proving such misconduct shall
lie upon the consignor.

$\frac{I}{we}$ further agree to accept responsibility for any consequences to the
property of the aforesaid Railway Administration or to the property of other
persons that may be in the course of conveyance, which may be caused by the
explosion of, or otherwise by, the said consignment, and that all risk and
responsibility whether to the Railway Administration to their servants or to
others, remain solely and entirely with $\frac{me}{us}$.

This agreement shall be deemed to be made separately with all Railway
Administrations or transport agents or other persons who shall be carriers for
any portion of the transit.

Signature of sender _____ Profession _____

Rank or { Father's name _____
Caste _____ Age _____ Residence _____

WITNESS. (Signature) _____ WITNESS. (Signature) _____
(Address) _____ (Address) _____

Note.—The above form is, for the convenience of the public, translated into the vernacular on the reverse
but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the
correctness of the vernacular translation.

To be filled up by Goods Clerk. _____
Particulars of packing _____ Goods Clerk

Date _____

Proposed Form G.

RISK NOTE FORM G.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used as an alternative to Risk Note Form D, in the case of dangerous explosive or combustible articles, for which an alternative "ordinary" or "risk acceptance" rate is quoted in the Tariff, when the sender desires to enter into a general agreement instead of executing a separate risk note for each consignment.)

STATION.

192

WHEREAS all consignments of _____

for which the Railway Administration quotes both owner's risk or special reduced rates and Railway risk or ordinary rates are (unless $\frac{I}{w_0}$ shall have entered into a special contract in relation to any particular consignment) despatched by $\frac{me}{us}$ at $\frac{my}{our}$ own risk and are charged for by the said Railway Administration at special reduced or owner's risk rates, instead of at ordinary tariff or railway risk rates, $\frac{I}{w_0}$, the undersigned, in consideration of such consignments being charged for at the special reduced or owner's risk rates, do hereby agree and undertake to hold the said Railway Administration harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignments from any cause whatever except upon proof that such loss, destruction, deterioration or damage arose from the misconduct of the Railway Administration's servants; provided that in the following cases

- (a) Non-delivery of the whole of a consignment or of the whole of one or more packages, forming part of a consignment, properly packed and fully addressed; unless such non-delivery is due to accidents to trains and to fire,
- (b) Pilferage from packages properly packed, provided the pilferage is pointed out to the servants of the Railway Administration on or before delivery,

the Railway Administration shall be required to lead evidence to show how the consignment was dealt with throughout the time it was in its possession or control; but if no circumstances from which misconduct can fairly be inferred are disclosed from the inability of the Railway Administration to account for the non-delivery or pilferage, the burden of proving such misconduct lie upon the consignor.

$\frac{I}{w_0}$ further agree to accept responsibility for any consequences to the property of the aforesaid Railway Administration, or to the property of other persons that may be in the course of conveyance, which may be caused by the explosion of or otherwise by, all or any of the said consignments, and that all risk and responsibility whether to the Railway Administration, to their servants or to others, remain solely and entirely with $\frac{me}{us}$.

This agreement shall be deemed to be made separately with all Railway Administrations or transport agents or other persons who shall be carriers for any portion of the transit.

Signature of sender _____ Profession _____

Rank or { Father's name _____
Caste _____ Age _____ Residence _____

WITNESS.

WITNESS.

(Signature) _____ (Signature) _____

(Residence) _____ (Residence) _____

Note.—The above form is, for the convenience of the public, translated into the vernacular on the reverse but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation.

Proposed Form H.**RISK NOTE FORM H.**

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used as an alternative to Risk Note Form B, when a sender desires to enter into a general agreement instead of executing a separate Risk Note for each consignment.)

_____ STATION.

_____ 193 .

WHEREAS all consignments of goods or animals for which the _____ Railway Administration quotes both owner's risk or special reduced rates and railway risk or ordinary rates are (unless $\frac{1}{2}$ shall have entered into a special contract in relation to any particular consignment) despatched by $\frac{1}{2}$ at $\frac{1}{2}$ own risk and are charged for by the _____ Railway Administration at special reduced or owner's risk rates instead of at ordinary tariff or railway risk rates, $\frac{1}{2}$, the under-signed, in consideration of such consignments being charged for at the special reduced or owner's risk rates, do hereby agree and undertake to hold the said Railway Administration harmless and free from all responsibility for any loss, destruction, or deterioration of, or damage to, all or any of such consignments from any cause whatever except upon proof that such loss, destruction, deterioration or damage arose from the misconduct of the Railway Administration's servants; provided that in the following cases

- (a) Non-delivery of the whole of a consignment or of the whole of one or more packages, forming part of a consignment, properly packed and fully addressed; unless such non-delivery is due to accidents to trains or to fire,
- (b) Pilferage from packages of merchandise properly packed, that is packed in accordance with instructions laid down in the goods tariff or, where there are no such instructions, protected otherwise than by paper or other packing readily removeable by hand, provided the pilferage is pointed out to the servants of the Railway Administration on or before delivery,

the Railway Administration shall be required to lead evidence to show how the consignment was dealt with throughout the time it was in its possession or control; but if no circumstances from which misconduct can fairly be inferred are disclosed from the inability of the Railway Administration to account for the non-delivery or pilferage, the burden of proving such misconduct shall lie upon the consignor.

This agreement shall be deemed to be made separately with all Railway Administrations or transport agents or other persons who shall be carriers for any portion of the transit.

WITNESS.

(Signature) _____ Signature of sender _____

(Residence) _____ Rank or { Father's name _____
Caste _____ Age _____

WITNESS.

(Signature) _____ Profession _____

(Residence) _____ (Residence) _____

Note.—The above form is, for the convenience of the public, translated into the vernacular on the reverse, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation.

ANNEXURE.

Copy of letter referred to in paragraph 3 of report.

No. 505-T.-21.

GOVERNMENT OF INDIA.
RAILWAY DEPARTMENT.
(RAILWAY BOARD.)

To

THE SECRETARIES TO THE GOVERNMENTS OF MADRAS, BOMBAY, BENGAL, THE UNITED PROVINCES, BIHAR AND ORISSA, THE PUNJAB, ASSAM AND CENTRAL PROVINCES, PUBLIC WORKS DEPARTMENTS.

THE SECRETARY TO THE GOVERNMENT OF BURMA, COMMERCE AND INDUSTRIES DEPARTMENT.

THE HON'BLE THE RESIDENTS AT HYDERABAD AND IN MYSORE.

THE HON'BLE THE AGENT TO THE GOVERNOR GENERAL IN RAJPUTANA AND IN CENTRAL INDIA.

THE HON'BLE THE AGENT TO THE GOVERNOR GENERAL AND CHIEF COMMISSIONER, NORTH-WEST FRONTIER PROVINCE.

THE HON'BLE THE AGENT TO THE GOVERNOR GENERAL, BALUCHISTAN.

THE SECRETARY, BURMA CHAMBER OF COMMERCE, RANGOON.

THE SECRETARY, BENGAL CHAMBER OF COMMERCE, CALCUTTA.

THE SECRETARY, BENGAL NATIONAL CHAMBER OF COMMERCE, CALCUTTA.

THE SECRETARY, BOMBAY CHAMBER OF COMMERCE, BOMBAY.

THE SECRETARY, INDIAN MERCHANTS CHAMBER AND BUREAU, BOMBAY.

THE SECRETARY, MADRAS CHAMBER OF COMMERCE, MADRAS.

THE SECRETARY, KARACHI CHAMBER OF COMMERCE, KARACHI.

THE SECRETARY, UPPER INDIA CHAMBER OF COMMERCE, CAWNPORE.

THE SECRETARY, THE PUNJAB CHAMBER OF COMMERCE, DELHI.

THE SECRETARY, COCHIN CHAMBER OF COMMERCE, COCHIN.

THE SECRETARY, TUTICORIN CHAMBER OF COMMERCE, TUTICORIN.

THE SECRETARY, COCANADA CHAMBER OF COMMERCE, COCANADA.

THE SECRETARY, CHITTAGONG CHAMBER OF COMMERCE, CHITTAGONG.

THE SECRETARY, THE MYSORE CHAMBER OF COMMERCE, MYSORE.

THE SECRETARY, SOUTHERN INDIA CHAMBER OF COMMERCE, MADRAS.

THE SECRETARY, INDIAN MINING ASSOCIATION, CALCUTTA.

THE SECRETARY, INDIAN MINING FEDERATION, CALCUTTA.

THE SECRETARY, CALCUTTA TRADES ASSOCIATION, CALCUTTA.

THE SECRETARY, INDIAN PIECE-GOODS ASSOCIATION, CALCUTTA.

THE SECRETARY, BOMBAY PRESIDENCY TRADES ASSOCIATION, LIMITED, BOMBAY.

THE SECRETARY, BOMBAY NATIVE PIECE-GOODS MERCHANTS' ASSOCIATION, BOMBAY.

THE SECRETARY, BOMBAY GRAIN MERCHANTS' ASSOCIATION, BOMBAY.

THE SECRETARY, MADRAS TRADES ASSOCIATION, MADRAS.

THE SECRETARY, RANGOON TRADES ASSOCIATION, RANGOON.

THE SECRETARY, INDIAN CHAMBER OF COMMERCE, LAHORE.

THE SECRETARY, PUNJAB TRADES ASSOCIATION, ^{LAHORE}
SIMLA

THE SECRETARY, CENTRAL PROVINCES AND BERAR MINING ASSOCIATION, KAMPTER.

THE AGENTS, ASSAM BENGAL, BARSIE LIGHT, BENGAL AND NORTH WESTERN, BENGAL NAGPUR, BOMBAY, BARODA AND CENTRAL INDIA, BURMA, EAST INDIAN, EASTERN BENGAL, GREAT INDIAN PENINSULA, GUZERAT, MADRAS AND SOUTHERN MAHARATTA, NORTH WESTERN, OUDH AND ROHILKHAND, ROHILKUND AND KUMAON, AND SOUTH INDIAN RAILWAYS.

THE AGENT AND CHIEF ENGINEER, HIS EXALTED HIGHNESS THE NIZAM'S GUARANTEED STATE RAILWAYS.

THE MANAGERS AND ENGINEERS-IN-CHIEF, BENGAL DOOARS, CUTCH STATE, GONDAL, JAMNAGAR STATE AND JUNAGAD STATE RAILWAYS.

THE MANAGERS BHAVNAGAR STATE, DHOLFUR BARI, JODHPUR-BIKANER AND UDALPUR CHITORGARH RAILWAYS.

THE MANAGER AND EXECUTIVE ENGINEER, MORVI RAILWAY.

MESSES McLEOD AND COMPANY, MANAGING AGENTS, BURDWAN KATWA, ETC., RAILWAYS.

MESSES MARTIN AND COMPANY, MANAGING AGENTS, FATWA-ISLAMPUR LIGHT RAILWAY.

THE MEMBER FOR TRADE, CUSTOMS AND EXCISE, GWALIOR DARBAR.

Simla, the 15th-17th April 1922.

DEAR SIR,

SIRS,

I am directed to address you with reference to the following Resolution which was adopted by the Legislative Assembly on the 9th March 1922 :—

“This Assembly recommends to the Governor General in Council to appoint a Committee of officials and non-officials with a majority

of Indian non-officials to consider the revision of Railway Risk Notes."

2. In pursuance of the terms of this Resolution the Government of India have appointed a Committee consisting of the gentlemen named below, who will consider the question of the revision of Railway Risk Notes and submit a report in due course :—

1. Mr. T. V. Shishagiri Ayyar, M.L.A., Chairman.
2. Rao Bahadur C. S. Subrahmanyam, M.L.A.
3. Mr. Manmohandas Ramji, M.L.A.
4. Mr. A. M. Clark, Member, Railway Board.
5. Mr. C. V. Bliss, C.I.E., Secretary, Indian Railway Conference Association.

3. As a preliminary to their deliberations the Committee have decided to invite the opinion of Local Governments and Administrations, Railways, and Chambers of Commerce and other public bodies who may be interested in this question on the form, construction and application in practice of the Risk Notes in use at present, and I am to ask that (with the permission of His Excellency the Governor in His Honour the Lieutenant-Governor

Council) the Committee may be favoured with the views of the Local Government the views of your Association on the your views

subject of their terms of reference.

4. I am to say that while it is the intention of the Committee to review all the existing forms of Railway Risk Notes, representations which have been received by the Government of India from time to time in connection with this matter have been concerned principally with the following points, and I am to request that these points may receive your special consideration :—

- (i) Whether the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration for carriage requires modification. (This refers specially to the terms of Risk Note Forms B and H).
- (ii) Whether the words loss, destruction or deterioration used in the Risk Note Forms should be altered or added to or defined in such a manner as to secure for the consignor the right to compensation (for the loss of the whole or part of the consignment) for the above arising from the wilful neglect or criminal acts of the servants of the Railway Administration.

5. I am to add that the Committee propose to meet in Simla during the first week of June, and to request that observations or suggestions on the subject of this letter may be addressed to the Secretary, Railway Board, so as to reach him not later than the 31st May 1922.

I have the honour to be,

SIR,

Your most obedient servant,

Yours faithfully,

, A. DUNCAN,

Assistant Secretary, Railway Board.

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letter No. 505-T.-21, dated 15th-17th April 1922.**

Letter No. 2848-B.-Rys., dated Shillong, the 26th May 1922.

Serial No. 1

From—MR. O. H. DESENNE, Officiating Secretary to the Government of Assam,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Revision of Railway Risk Notes.

With reference to your letter No. 505-T.-21, dated the 15th-17th April 1922, on the above subject, I am directed

Assam
Government.

1. Letter* No. 131, dated the 11th May 1922, from the Secretary, Assam Branch, Indian Tea Association. 1922, on the above subject, I am directed by the Government of Assam to forward herewith, for the information of the Railway Board, copies of the marginally noted letters on the above subject, and to say that there is much to be said on both aspects of the question but that this Government is in general agreement with the opinions expressed in the Secretary of the Assam Branch Indian Tea Association's letter No. 131, dated the 11th May 1922.
- *Serial No. 2.
2. Letter† No. T-73-274-G., dated the 10th May 1922, from the Agent and General Manager, Assam Railways and Trading Company, Limited.
- †Serial No. 3.
3. Letter‡ No. 5028, dated the 13th-15th May 1922, from the Manager, Jorhat Provincial Railway.
- ‡Serial No. 4.
4. Letter§ dated the 18th May 1922, from the Secretary, Surma Valley Branch, Indian Tea Association.
- §Serial No. 5.

Copy of letter from the Secretary, Assam Branch Indian Tea Association, to the Secretary to the Government of Assam in the Public Works Department, No. 131, dated the 11th May 1922.

Serial No. 2.

I am directed to acknowledge receipt of your letter No. 2424-25-B.-Rys., dated the 29th April 1922 and its enclosure on the above subject and asking this Association's views thereon.

Indian Tea
Association,
Assam Branch.

I am to inform you that it is considered the time has arrived for a drastic revision of Railway Risk Notes in favour of consignees and consignors.

From Press accounts of the recent Railway Commission Report it appears that, commenting on Risk Notes, the Commission stated the Railway Companies took no trouble over goods despatched at owner's risk, that the Committee had found difficulty in tracing records of goods so despatched and that they had concluded therefore that in many cases entries in connection with such consignments were not made in the companies' books. They also stated that it was a curious fact that there were seldom claims in respect of goods consigned at Railway risk, and that the reason given in the evidence for this was, that these consignments were carefully checked and watched, which procedure was not adopted in connection with consignments at owner's risk, and that consignors realizing the practical impossibility of succeeding in their claim seldom complained of their loss.

Under the above circumstances it must be admitted that thieves know very well they can steal goods carried at owner's risk with little chance of detection. On the Dibru-Sadiya Railway tea is only carried at owner's risk, with the result the Railway can lose 99 per cent. of a consignment and be immune from claim, unless the consignor can prove wilful neglect on the part of the Railway, which is practically impossible.

It is considered the onus of proof that the goods are properly handled and accounting for their loss should be on the carriers and that the word "wilful" should be omitted from the Risk Note; also that all classes of goods should be carried at owner's risk when demanded by consignors.

Having regard to the fact that Railways are now well paid in freights it is considered no extra freight should be levied on revised Risk Notes.

There is no doubt that a great many cases of theft are due to loaded wagons standing in sidings and stations for an unnecessary period, the obvious remedy for which is for Railways to ensure their wagons are moved more speedily and the delays mentioned do not occur.

It is considered that the present forms of Risk Notes protect the Railways from consignor and consignee's claims and that until these forms are remedied no Railway is likely to take serious steps to see that consignor's goods are safely stored on delivery to the Railway, carried in theft-proof wagons in the charge of honest Railway servants, and delivered intact.

In conclusion I am to observe that reasonable protection to the public from theft on Railways will probably help to reduce prices.

Serial No. 8. *Copy of letter from the Agent and General Manager, Assam Railways and Trading Company, Limited, to the Secretary to the Government of Assam in the Public Works Department, No. T-73-274-G., dated the 10th May 1922.*

Revision of Railway Risk Notes.

**Dibru Sadiya
Railway.**

With reference to your No. 2421-23-B.-Rys. of the 29th of April 1922, on the above subject, I have the honour to observe as follows:—

Goods shipped at Railway Risk incur the payment of such freight rates as will cover the Railway's liability to pay compensation claims for losses incurred during the Railway's baileeship of the goods in question. To extend trade, a rate of freight was called for much lower than that existing, and the Owner's Risk rate was evolved.

Before contracting to carry goods at this reduced rate, the Railways naturally laid down certain conditions to govern the new practice, embodying those conditions in the Risk Notes now under consideration.

Fundamentally it must be conceded that the Railways were distinctly within their rights in formulating these conditions. It follows, therefore, that any person electing to forward his goods under these expressed stipulations accepts them in full. That being conceded, why find fault with them? It is my settled conviction that the reason lies primarily with the shippers themselves, and only in a minor degree with the Railway Companies.

The principal cause of trouble lies in the following clause: "agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other Transport Agents or carriers employed by them respectively, over whose Railways or by or through whose transport agency or agencies the said goods or animals may be carried in transit from—Station to—Station harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of the Railway Administration or to theft by or to the wilful neglect of its servants," etc., etc.

If the shipper accepts the above conditions he should protect himself and his consignee by taking such precautions as may reasonably ensure his goods safe transit notwithstanding the severity of the terms agreed to. But he frequently does not. He sends machinery in cases which fall to pieces when turned over, bales of cotton goods in old gunny cloth sewn with different sorts of twine, fruit in baskets covered with gunny so loosely sewed on that a hand can be

inserted to extract the fruit with very little trouble, and stores in boxes often old and improperly nailed down, with or without wires which when they are present are often so ineffectually secured as to be utterly useless; all the above not only prove gross carelessness on the part of the shipper, but constitute a premium on dishonesty.

On the other hand, if Railways refused to accept all articles insufficiently or indifferently packed, only taking over those properly protected and admitting liability solely for proved "misconduct" on the part of their employees, I see no reason why the main conditions of the Risk Notes should not remain as at present.

"Misconduct" would appear to be incontestible where tampering with a package is evident. Open delivery should then be given and compensation paid if a shortage of the contents be proved.

Copy of letter from the Manager, Jorhat Provincial Railway, to the Secretary to the Government of Assam in the Public Works Department, No. 5028-XX-10, dated the 13/15th May 1922. Serial No. 4.

Modification of Risk Notes.

With reference to your Memorandum No. 2421-23-B.-Rys., dated the 29th April 1922, I have the honour to state that in my opinion Risk Notes "B" and "H" require a little modification as explained hereafter, others may remain as they are. Jorhat Provincial Railway.

The loss to a consignment generally occurs through the negligence on the part of senders in bad packing in which case pilferage and destruction or deterioration must take place.

In the risk note forms the word 'neglect' should be substituted by 'misconduct' and the clause of one or more complete packages forming part of a consignment may be substituted by 'part of a consignment', thus allowing the consignees some advantage in a claim for compensation.

The onus of proof should lie with the consignor or consignee.

The words 'loss, destruction or deterioration' may be followed by the words damage, misconveyance, misdelivery or detention of goods.

I should say that nothing in the above condition exempts the carriers from any liability they might otherwise incur in the following cases on pilferage, non-delivery or misdelivery—

- (i) Non-delivery of any package fully and properly addressed unless such non-delivery is due to accidents to trains or to fire.
- (ii) Pilferage from packages of goods protected otherwise than by paper or other packing easily removable by hand provided the pilferage is pointed out to a servant of the Company on or before the delivery.
- (iii) Mis-delivery where goods fully and properly addressed are not tendered to the consignee.

Copy of letter from the Secretary, Surma Valley Branch, Indian Tea Association, to the Secretary to the Government of Assam in the Public Works Department, dated the 18th May 1922. Serial No. 5.

Revision of Railway Risk Notes.

In reply to your letter No. 2424-25-B.-Rys., dated the 29th April, I am directed to say that this Branch of the Association are of opinion that :— Indian Tea Association, Surma Valley Branch.

- (1) Railway Risk Note Form B should be amended to admit of the Consignee receiving compensation for loss incurred by pilfering from packages in transit,

- (2) and to point out that in spite of sealed wagons, it is almost impossible to import rice from Chittagong to the tea districts without serious loss to the importer *en route*, which is rarely made good by the Railway Company.

Serial No. 6.

No. $\frac{507}{\text{XIR-1-22}}$ -C-Railway, dated Camp Ranchi, the 27th May 1922.

From—Mr. C. B. MALLOR, Offg. Secretary to the Government of Bihar and Orissa, Public Works Department,

To—The Secretary, Railway Board, Simla.

Revision of Railway Risk Note Forms.

Government of
Bihar and
Orissa.

With reference to letter No. 505-T-21, dated the 15th-17th April 1922, from the Railway Board, on the above subject, I am directed by His Excellency the Governor in Council, to say that the universal opinion expressed by the many officials whose views were obtained is that the wording of the present risk note forms is unduly in favour of the Railway Administration. It is considered that the issue of a railway receipt is sufficient acknowledgment that goods, as described in the receipt, were accepted by the Railway, and that the onus of proof should therefore be with the Railway and not with the consignor.

Under existing conditions a consignor has the utmost difficulty in obtaining any compensation for loss.

2. It is further recommended that the words "loss, destruction or deterioration" should be so modified that a consignor should be secured against the loss of a part of a consignment and that the Railway Administration need only be secured against loss or deterioration due to unforeseen events or accidents.

Serial No. 7.

No. 398-C.B., dated Lahore, the 30th May 1922.

From—The Secretary, Communications Board, Punjab,

To—The Secretary, Railway Board, Simla.

Communica-
tions Board,
Punjab.

With reference to your letter No. 505-T-21, dated the 15th-17th April 1922, to the address of the Secretary to Government, Punjab, Public Works Department, Buildings and Roads Branch, I have the honour to forward you direct to save time a copy of a report* on the subject by a sub-committee of my Board, and to say that the President of

the Board does not wish to make any comments.

2. I have also to forward for the information of the committee which is now sitting on the subject of Railway Risk Notes, a copy of the Proceedings of the Institute of Transport for March 1922 (return requested) and to say that the President of this Board suggests that the paper† on Transport Law on page 132, may interest members of the committee, who have not possibly seen it.

† Not printed

Report of a Sub-Committee of the Punjab Communications Board appointed by the President under Rule 4 (f) of the Rules of Business of the Board to advise on the matters dealt with in Government of India letter No. 505-T-21 of 15th-17th April 1922.

Serial No. 8.
Sub-Committee
Punjab
Communications Board.

Present.

MR. E. A. SCOTT, O.B.E., M.L.C., *Director of Industries, Punjab, in the Chair.*

MR. J. H. CHASE, *Deputy Traffic Manager, for Agent, North Western Railway.*

RAO BAHADUR CHAUDHRI LAL CHAND, O.B.E., *of Rohtak.*

LALA MULK RAJ BEALLA, *Managing Director, the Punjab Co-operative Bank, Limited, Lahore.*

Secretary.

MR. K. G. MITCHELL.

(LALA RATTAN CHAND, *Member*, and MR. W. HALL, *Co-opted could not attend.*)

Report of the Committee.

We held a meeting on Tuesday, the 16th May, 1922 at 10-30 A.M. in the Committee Room, New Council Chamber, Lahore, and have to report as follows:—

1. With respect to the query in paragraph 4 (1) of the Government of India letter we think that as a general rule in a claim for compensation arising out of the loss of goods entrusted to the Railway Administration, the onus of proof should remain on the consignor. But we would suggest that the provisions of risk note Forms B and H should be conditional on a reasonable period of transit.
2. We think that the term "running train" should be more clearly defined to the public so as to leave no room for any misconception as to its meaning.
3. With respect to paragraph 4 (ii) of the Government of India letter, we do not see how any alteration to the words "loss, destruction or deterioration" used in risk note forms can secure for the consignor, a right to compensation as suggested. But we understand that there is a general wish that the liability of the Railway Administration under risk note Form B should be extended to cover losses in weight or bulk and not be limited to total losses or loss of complete packages. This matter will no doubt be considered by the committee appointed by the Government of India, with special reference to the possible disproportionate increase in the number of claims preferred, and to the possible enhancement of owner's risk rates.
4. It has been suggested to us that the note at the foot of the risk note form dealing with the vernacular translation on the reverse in so far as it disclaims all responsibility for the correctness of that translation is regarded with suspicion, we feel that there should be no objection to deleting the words "and the Railway Administration accepts no responsibility for the correctness of the vernacular translation." The amended form of this foot-note would not in our opinion be open to objection.
5. In conclusion we wish to state that owing to the short notice given we have been unable to devote to the subject the time and study which its importance requires.

(Sd.) E. A. SCOTT, *Chairman.*

" J. H. CHASE.

" MULK RAJ.

" K. G. MITCHELL, *Secretary.*

Note by Rao Bahadur Chaudhri Lal Chand.

I disagree with paragraph (1) above. I hold that in the first instance it should be for the Railway Administration to prove that the loss, etc. was not due to want of proper care on its part.

With the rest of the findings of the Committee I agree.

(Sd.) LAL CHAND.

Serial No. 9.

No. 102-G.S., dated Simla, the 2nd June 1922.

From—Mr. V. STANTON, Officiating Secretary to Government, Punjab, Public Works Department, Buildings and Roads Branch,

To—The Secretary to the Government of India, Railway Board.

**Punjab
Government.**

With reference to your letter No. $\frac{505}{T-31}$, dated $\frac{15}{7}$ -th April 1922, dealing with the question of the revision of Railway Risk Notes, I have the honour to remark as follows :—

- (1) *Whether the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of loss of goods entrusted to Railway Administration for carriage requires modifications ?*

It has been recently held by the Legal Adviser of this Government that unless the consignor despatches goods at owner's risk in deliberate contravention of the consignee's order to despatch at railway risk the consignee is under all circumstances bound to pay the consignor according to the railway receipt for the goods despatched. It will thus be seen that the consignee, when it is a Government Department, must make the claim against the Railway for compensation, no matter who the consignor is.

Now in the case of a commercial or public consignee not receiving proper consideration to a claim within a reasonable time he can always have recourse to the law courts for recovery of damages, but a Government Department consignee cannot do so and is bound to give a credit note for the full amount of the railway charges to the railway no matter whether the consignment is short or damaged. It is then for that Government Department to put in a claim to the railway Traffic Manager (Claims) for compensation in the case of any loss or damage but when such claims have been made it has invariably been found that excessive delays occur, as this Government has many claims still outstanding of many years duration.

There should be no differentiation in the treatment of claims as instituted by the public or a Government Department.

The principle of throwing the onus of proof on the consignee (a Government Department) is not at all satisfactory and this Government would therefore recommend that where there is any shortage or any discrepancy of any sort in the delivery of goods to the Department by the Railway that full credit note should be issued by the Department with the words in red ink thereon, "under protest," and that a full detailed report of the reasons of the protest should be attached to the credit note. It should be laid down in the Railway Rules that no credit note "under protest" should reach the head offices without the explanatory note attached to it; also that the debit for this credit note cannot be raised by the railway Audit Department against the other Government Departments until either the protesting Department withdraws its protest or until a decision has been given by some third party nominated to act as arbitrator in the dispute.

It is considered essential that some onus of proof be thrown on the Railway Department to prove that the objections raised by the consignee are unjustifiable. It is too much to expect a consignee to have to prove his cases where a consignment has had to be carried on more than one Railway. The Railway as carriers must bear the consequences of the action of their agents and it is only right, that the onus of proving that the damage or loss was beyond their control, must rest with them and not with the consignee who cannot have facilities for proving how and where the loss or damage occurred.

- (2) *Whether the words "Loss," "Destruction" or "Deterioration" used in the risk note forms should be altered or added to or defined in such a manner as to secure for the consignor the right to compensation (for the loss of whole or part of the consignment) for the above arising from the wilful neglect or criminal acts of the servants of the Railway Administration ?*

As regards "Loss and Destruction" it is reasonable to expect the Railway Department who receive payment for the carriage of stores that they be forwarded to their destination safely and in case they do not the Railway Department should compensate the consignee for loss or damage to the articles whether these be consigned under a risk note or otherwise.

As regards "Deterioration" the case is not so very pressing as in case an article has deteriorated in transit it will be easy for the consignee to prove his claims from the state of the article on arrival.

This Government, however, takes exception to the use of the word "wilful." This word should in its opinion be entirely cut out from the Risk Note Form. By the use of such word the same unsatisfactory situation of throwing the onus of proof on the consignor is again arrived at.

As an instance of the difficulties experienced in proving wilful neglect a copy of a report from a Punjab officer * is attached. * Not printed.

The Punjab Government is consequently of opinion that the word "wilful" should be omitted from the risk note entirely wherever it is now used.

Further this Government objects to the words "any unforeseen event or accident." It is held that a clever argument might be arranged to cover the deliberate organised robbery of a consignment as an unforeseen event or accident. According to the literal words it is justly so.

These words should be changed to those used in the usual legal phraseology of Insurances, e.g., derailment, collision, earthquake, lightning or the act of God. This position as it stands now is quite inequitable.

Finally, it may be remarked that this Government is of opinion that if the procedure recommended in the former case (1) under consideration is adopted many of the present unsatisfactory disputes regarding demurrage and wharfage charges would automatically disappear. These questions do not come within the scope of the present enquiry but it is considered necessary to note here the improvement in the side issues that would also occur if the proposal is adopted.

Your letter under reply was only received by this Government on the 20th April and consequently sufficient time has not been available to make the detailed enquiries into this very important question which it would otherwise have wished to make before replying in time to reach the office of the Railway Board by 31st May.

It is possible therefore that this Government may have further remarks to make which will be forwarded in due course in the hope that they may yet be received in time to lay before the Committee.

No. 361-M.-199-K., dated Maymyo, the 27th May 1922.

Serial No. 10.

From—W. BOOTH-GRAVELY, Esq., I.C.S., Revenue Secretary to the Government of Burma, Development Department,

To—The Secretary to the Government of India, Railway Department (Railway Board).

SUBJECT.—*Railway Risk Note Forms.—Revision of —.*

I am directed to invite a reference to Mr. Duncan's letter No. 505-T.-21, Government of Burma, dated the 15th-17th April 1922, and to forward for the information of the Railway Board, a copy of a letter from the Secretary to the Development Commissioner, Burma, No. 330-6-I.-27,† dated the 17th May 1922, submitting the Development Commissioner's views on the subject noted above. † Serial No. 11.

2. His Honour is inclined to agree with the Development Commissioner and finds it difficult to make further suggestions with any confidence. One proposal which has been put forward is that the risk on account of theft should extend not merely to theft by railway servants and transport agents or carriers employed by the railways, but also to pilfering of any kind. The added protection would be justified on the ground that, except in some cases of thefts from running goods trains, where goods are carried in open trucks, the thefts must either be committed by railway servants or with their connivance or owing to their negligence. It has always been His Honour's impression that the railway authorities are somewhat supine in the matter of pilfering from goods lying in exposed goods-sheds or on platforms, and within His Honour's knowledge, discoveries have more than once been made of thefts in guards vans carried out by a conspiracy among railway servants. The whole system of insurance in such cases is, however, highly technical, both for marine and railway transport, and the time given has not been sufficient for the thorough examination of the question upon which only would His Honour be prepared to express an assured opinion.

3. With regard to the letter to the Railway Board from the Agent, Burma Railways, No. 27-C.-24‡ dated the 13th May 1922, I am to say that His Honour is unable to agree to suggestions (c) and (d) contained in paragraph 2 of that letter, which seem to him to extend unduly the immunity claimed by the railway authorities. ‡ Serial No. 32.

4. I am to add that His Honour heartily welcomes the examination of the whole subject by a Committee.

Serial No. 11. Letter from J. F. Sheehy, Esq., I.C.S., Officiating Secretary to the Development Commissioner, Burma, to the Revenue Secretary to the Government of Burma, No. 330-6-I-27, dated the 17th May 1922.

SUBJECT.—Railway Risk Note Forms.—Revision of —.

Development
Commissioner
Burma.

I am directed to reply to your Development Department letter No. 66-199-K. of the 3rd May 1922, in which you ask for the Development Commissioner's views regarding the revision of railway risk notes.

2. The officiating Development Commissioner has found it impossible in the short time allowed to make any enquiries regarding the general feeling of the public in Burma on the subject. His personal experience of sending things by rail has been more fortunate than that of Mr. C. S. Subrahmanayam, who moved the resolution in the Indian Legislative Assembly on the 9th March 1922, for the appointment of a Committee to consider the subject or of Mr. Seshagiri Ayyar who supported him. In introducing his resolution Mr. Subrahmanayam referred especially to Risk Notes A, B and H. Risk Note A is a note prescribed for use when articles are tendered for carriage which are either already in bad condition or so defectively packed as to be liable to damage, leakage, or wastage in transit. Mr. Subrahmanayam remarked that the railways get notes in this form signed by consignors even though the packing may be entirely sound. This, however, does not constitute a defect in the drafting of the note but an abuse of the form of note itself. The remedy lies in the hands of the sender, namely, to refuse to sign the note and to appeal to the higher railway authorities if their subordinates decline to accept goods without the note being signed. Risk Note B and Risk Note H are prescribed for use when the sender elects to despatch at reduced or "owner's risk" rates articles or animals for which an alternative "ordinary" or "risk acceptance" rate is quoted in the tariff. Risk Note H is a form of general agreement while Risk Note B is a form for use with each special consignment. Under both forms the consignor undertakes to hold the railway company free from all responsibility for any loss, destruction, deterioration of, or damage to, the goods consigned, from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment, due either to the wilful neglect of the Railway Administration, or to theft by or to the wilful neglect of its servants, etc., with the proviso that wilful neglect shall not include fire, robbery from a running train or any other unforeseen event or accident.

Mr. Subrahmanayam's objection to this provision is that it lays the onus on the consignor to prove the negligence of the railway company and therefore is not according to the ordinary law. The answer to this objection is that in return for this concession in their favour the Railway Companies grant a substantial reduction in the charge for freight and that if a consignor of goods or animals desires to hold the railway company responsible for loss, destruction, deterioration of, or damage to, his goods or animals, he has the alternative in most cases of sending them at railway risk. Any attempt to increase the responsibility of railway companies in respect of goods carried at owner's risk must inevitably in the long run tend to enhance the rates of freight charged on such goods and to decrease the advantage of the alternative tariff.

3. The officiating Development Commissioner has not had time to study the various rulings given by the High Courts on the interpretation of the drafting of the Risk Note forms and he has no suggestions to make for their amendment so as to meet the objections raised by these rulings. No doubt in certain cases a strained interpretation has been placed on the wording of the notes. The Hon'ble Members of the Legislative Assembly who favoured that body with their views on the subject of the iniquity of the present forms of risk notes seem to have adopted the attitude of the man who purchases a cheap substitute for a well-known article and then complains that the substitute is inferior. They have ignored the fact that the protection afforded to the Railway Companies by these risk notes is merely the *quid pro quo* for a substantial reduction in freight.

4. In conclusion I am to say that Mr. Keith's answer to the two specific questions in paragraph 4 of the Railway Board's letter No. 505-T-21 of the 15th April 1922, is :

- (i) that the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a railway administration for carriage requires no modification ;

- (ii) that the words "loss, destruction or deterioration" used in the Risk Note forms should not be altered so as to secure for the consignor the right to compensation when these arise from the wilful neglect or criminal acts of the servants of the railway administration, unless the railway authorities are at the same time empowered to refuse to accept goods insufficiently protected by packing and to charge higher rates.

No. 3530-P.F.-7-23, dated Hyderabad Residency, the 30th May 1922.

Serial No. 12.

From—The HON'BLE LIEUTENANT-COLONEL S. G. KNOX, C.S.I., C.I.E., Resident at Hyderabad,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Railway Risk Note Forms.—Revision of —.

With reference to Mr. A. Duncan's letter No. 505-T.-21, dated the 15th-17th April 1922, I have the honour to state that I have no observations or suggestions to make on the subject of the revision of the Railway Risk Notes.

No. 118-T.-Enc.-1, dated Camp Mercava, the 29th May 1922.

Serial No. 13.

From—The HON'BLE MR. W. P. BARTON, C.S.I., C.I.E., I.C.S., Resident in Mysore,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Railway Risk Notes.

With reference to your letter No. 505-T.-21, dated the 15th-17th April 1922, I have the honour to forward a copy of a letter* dated the 11th May 1922, from the Master, Bangalore Trades Association, on the above subject.

2. The Mysore Darbar have not yet furnished me with their views. Their reply will be forwarded on receipt.

3. I have no remarks to offer on the subject.

Letter from the Master, Bangalore Trades Association, Bangalore, to the Collector, Civil and Military Station, Bangalore, dated the 11th May 1922.

With reference to your No. 2345 anent letter No. 505-T.-21, dated the 15th-17th April 1922, from the Government of India, Railway Board, Simla, to Local Governments and Administrations.

The members of this association are of opinion, that "owner's risk" puts a premium on dishonesty, a condition which the public at large are agreed, that the railway appear unwilling to discontinue. We consider, that a fair average charge should be levied, and that risk notes should be eliminated.

Every endeavour was made to send this reply as desired before the 10th instant, but on account of the inclemency of the weather, it was not found possible to hold a meeting to consider the question.

Telegram No. 17-Tr., dated Darjeeling, the 5th June 1922.

Serial No. 15.

From—The Secretary to the Government of Bengal, Public Works Department, Railway Branch,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Please refer correspondence ending your No. 505-T.-21 of 22nd May 1922, revision of Railway Risk Notes. Bengal Government have no suggestion to offer or opinion to express having no practical experience of cases arising out of use of Risk Note Forms as at present in use.

Serial No. 16.

No. 129-T., dated Camp Mercara, the 2nd June 1922.

From—The Hon'ble Mr. W. P. Barton, C.S.I., C.I.E., I.C.S., Resident in Mysore,
To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Resident in Mysore.

*Revision of Railway Risk Notes.**Serial No. 19.
†Serial No. 17.

In continuation of my letter No. 118-T., dated the 29th May 1922,* I have the honour to enclose a copy of a letter No. 3736,† dated the 26th-27th May 1922, from the Mysore Durbar on the above subject.

Serial No. 17.

Letter from the Secretary to the Government of Mysore for Railways, Mysore, to the Secretary to the Resident in Mysore. No. 3736, dated the 26th-27th May 1922.

Revision of Railway Risk Notes.

Mysore Railways.

With reference to your endorsement No. 3747-98-1905, dated 27th April 1922, I am directed to state that the question of revision of the risk note forms has been frequently considered by the Indian Railway Conference Association and it is the considered opinion of that body that under the conditions of railway transport existing in India, it is not practicable to increase the liability of railways in the case of goods carried at Owner's Risk rates without substantially increasing the rates themselves. There is generally a very large difference between "Railway Risk" and Owner's Risk rates and the latter are justified only owing to the immunity from responsibility they secure for Railway. By throwing the onus of proof on Railways their responsibility will be considerably increased and to make up for this, railways will have to enhance the rates which may react on the volume of traffic and seriously reduce it in some cases.

As regards the second point raised by the Railway Board, I am to state that even under present risk note conditions Railways are not immune from claims for loss, destruction, deterioration or damage when it is due to "Wilful neglect of the Railway administration or to theft by or to the wilful neglect of its servants."

Serial No. 18.

No. 1826, dated Indore, the 7th June 1922.

From—Lieutenant-Colonel D. B. Blakey, C.I.E., I.A., Agent to the Governor-General in Central India,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Revision of Railway Risk Notes.

Agent to Governor-General in Central India.

I have the honour to refer to your letter No. 505-T.-21, dated the 15th-17th April 1922, regarding the revision of "Railway Risk Notes" and to say that Darbars interested have not had time to reply.

2. As regards paragraph 4 of your letter my own comments are as follows:—

Paragraph 4 (i).—The conditions of risk notes "B" and "H" form a special contract, altering the general liability of the railway company, and the fact that the consignor has to discharge the onus of proof does not seem unreasonable when he wishes to make good a claim based on the allegation that his goods were lost within the meaning of the special conditions. This principle merely represents the ordinary legal maxim that the onus of proof lies on the party, who would fail in default of production of proof, and it is not very clear to me why a consignor of goods by railway should receive more favoured treatment.

Paragraph 4 (ii).—Any consideration of this question must also take into account the principle that risk notes are documents containing terms of a special agreement whereby the consignor, paying a lower freight than he would otherwise be bound to pay, agrees to hold the railway company free from the responsibility under which it would otherwise lie for loss, destruction or damage to goods. His agreement amounts to a valid and legal contract and it appears to me that an alteration of its terms in favour of the consignor should carry with it a corresponding alteration of the freight charge in favour of the railway company, where such alteration of the terms is material, provided that the existing conditions are not opposed to public policy. In the present instance the argument appears to have considerable force that the omission to make all criminal acts of the servants of the railway (the Bombay, Baroda and Central India railway risk notes "B," "D" and "H" examined by me include "theft" only) a legal basis for a claim by a consignor runs counter to the public interest and is opposed to public policy. Criminal acts, being of a nature which cannot be foreseen, can neither be condoned or anticipated as part of a reasonable contract, and should not be excluded in the case of "risk notes" from forming causes of action on which a consignor can sue. In addition their inclusion will render it a matter of direct pecuniary interest to the company itself to supervise strictly its own subordinates and to deal effectively with those whose characters are suspect.

No. 1062-S., dated Mount Abu, the 8th June 1922.

Serial No. 19.

From—Mr. H. J. OLIPHANT, Secretary to the Hon'ble the Agent to the Governor-General, Rajputana, in the Public Works Department, Mount Abu.

To—The Secretary to the Government of India, in the Railway Department (Railway Board), Simla.

Revision of Railway Risk Note Forms.

With reference to letter No. 505-T.-21, dated the 1⁵/₇th April 1922, from the Government of India in the Railway Department (Railway Board), I am directed to say that in the opinion of the Hon'ble the Agent to the Governor-General, Rajputana, and Chief Commissioner, Ajmer-Merwara, a revision of the Railway Risk Note Forms is necessary. The burden of proving wilful neglect on the part of the Railway Administration or its servants, or of theft by anybody should not be thrown on the owner or consignor of goods as he has no control over or access to goods after they have been made over for booking. It should be for the Railway Administration to prove that the loss occurred in spite of their care and caution, if they desire exoneration from responsibility.

2. Mr. Holland further thinks that the rules regarding booking of Consignments at "Railway Risk" should be made less stringent, and that reasonable facilities should be afforded for such booking.

It is understood that in the case of parcels containing perishable articles, such as fresh fruits, vegetables, fish, sweets, etc., the Railway Administration takes no responsibility for any shortage in the contents, except for the loss of a complete parcel, and although such parcels frequently reach the consignee with the greater portion of the contents pilfered, the Railway cannot be held liable for the loss in any way. I am to suggest that if possible steps may be taken to impose on the Railway Administration reasonable responsibility for delivering perishable parcels in good condition.

3. With regard to definition of the words "Loss," "Destruction" or "Deterioration" used in the Risk Note Forms, I am to say that these terms

should be so defined or altered as to secure for the consignor the right to compensation for loss occasioned by the wilful neglect or criminal acts of the servants of the Railway authorities.

Members of the Commercial Community in Ajmer-Merwara who were consulted on the subject agree in these views, and I am to enclose for the information of the Committee copies of two of the opinions received. That from Mr. Shiam Lal of the Bharat Beopar Company alleges extensive abuse of the Risk Note Form A, consignors being forced to sign it to secure despatch even when the goods are handed over securely packed and in good condition. The Commissioner, Ajmer-Merwara, reports that he has heard similar complaints from others also.

Enclosures—

*Serial No. 20.
†Serial No. 21.

Letter dated 9th May 1922 from Rai Sahib Pandit Chandrika Pershad.*

Letter dated 10th May 1922 from Pandit Shiam Lal, Bharat Beopar Company†
Ajmer.

Serial No. 20. *Copy of letter, dated the 9th May 1922, from Rai Sahib Pandit Chandrika Prashad, to the Commissioner, Ajmer-Merwara.*

In reply to your letter No. 6919-23, dated 3rd May, I beg to offer the following remarks :—

In the case of Risk Note forms B, D, G and H the burden of proving wilful neglect on the part of the Railway Administration or its servants, or theft, etc., by anybody should not be thrown upon the owner or consignor of goods, as he has no control over, or access to goods after they leave the booking station. I would invite attention to the recommendation made in 1903 by the late Sir Thomas Robertson, Special Railway Commissioner, that the Risk Note Forms in use in India should be assimilated to the forms in use in England, where the Railways are not exempted for the wilful acts of their own servants. From the recent report of the Indian Railway Police Committee, it will be observed that the practice of the Indian Railways repudiating liability under Risk Notes encourages thefts of goods and of fruit parcels especially by railway servants. In my book "the Indian Railways" (recently published at the Mission Press, Ajmer) I have referred to this matter at pages 473-74.

As regards forms A and C, I would remark that the Railways at times take advantage of their strong position and compel people to sign these forms. When a consignment is brought for despatch in a defective packing or bad condition, the consequences should be clearly pointed out to the owner, in which case the latter would rectify the defect rather than run the risk of bearing the cost of loss or damage in transit.

By using open wagons where covered stock should be used, the railways shift their responsibility on the shoulders of the public. It is the duty of railways to provide proper wagons for the traffic. Form C should not therefore be forced upon the people.

Your letter reached me only last evening and I am sending this reply by the return mail.

Serial No. 21. *Copy of letter, dated the 10th May 1922, from Pandit Shiam Lal Bhargava, Agent of the Bharat Beopar Co., Limited, Ajmer, to the Commissioner, Ajmer-Merwara.*

I beg to acknowledge the receipt of your letter No. 6919-23-XXVIII-38, of the 3rd May 1922, and beg to state that the Railway Risk Note Forms referred to therein have hitherto been a source of great trouble to the trading community and it is now hoped that since the Government has taken the matter into its hands, their grievances will be mostly redressed.

Whenever goods (bale, package, case, or bag) are presented for booking at the railway stations, the railway officials do not like to book them at the railway risk but ask the consignor to execute risk note form A and if persistently asked by him to send it at the railway risk, they place difficulties in his way and generally refuse the goods under some oral pretence but do not give any written objection although its condition is good and it is securely packed. There are numerous instances in which the bales packed by the mills and machine presses were presented at the railway station for being booked at the railway risk and they were not accepted.

It may be needless to state that the goods are despatched whenever there is demand and in such cases the consignor cannot detain the goods but has to send them anyhow or other and since a reference to higher authorities causes delay, he has to execute the risk note form A and when this is done, the railway officials pass any or more of the following remarks in the railway receipt—

“ Insecurely packed, defective packing, bad packing, loose, etc., etc.”

in spite of the fact that the consignment is securely and strongly packed. These remarks are objected by the consignor but the railway officials do not pay any regard or attention over the cries of the public and carelessly throw away the railway receipts. The poor consignor has no other alternative but to leave the goods at the mercy of the railway officials, who either knowingly or carelessly handle it in such a way that it is very difficult to its being delivered at destination safely without its contents being pilfered or damaged.

By execution of the risk note form A the railway servants take undue advantage because they know that if any damage or loss is caused to the consignment the railway is not responsible therefor and thus the public has to incur heavy losses.

In fact such an execution of risk note forms is but an abuse as it was while legislating never intended that the railway administration would allow the goods being roughly handled or pilfered and could not be liable for any loss or damage incurred in transit and while it was in their custody.

In the cases of other risk note forms, it is often experienced that the railway administration take very little care of the goods which a common carrier would take of his own and they make themselves harmless and free from responsibility on the strength of their risk note forms only.

Properly speaking, the execution of these risk note forms does not make any saving to the public as they have to suffer much on account of the goods being pilfered and damaged in comparison with the little amount for difference in freight.

* Hitherto the onus of proof lay on the owner and not on the carriers, while properly speaking it should entirely rest with the carrier as to how, when and where the loss or damage occurred as the carrier is always with the goods and not the owner, who cannot at present naturally prove his case.

The words “ loss, destruction or deterioration ” used in the risk note forms have not been explained in the Railway Act and I think it should be done now. These risk note forms should be modified in such a way as to bind the railways actually to take care of the goods as a man of ordinary intelligence and capability would take of his own in which respect the carriers hitherto have been found negligent and evasive.

The railways should be made liable for loss or damage, destruction or deterioration in all cases in which they cannot sufficiently prove that they have taken proper care of the goods.

In cases of packages or articles which are actually defectively or loosely packed, the railways should not accept them unless the consignor presents them duly bound or packed or unless he executes a risk note form making the carrier harmless of any damage or deterioration caused thereto in transit on account of defective or loose packing.

I have consulted several leading merchants in this behalf and they all agree with me.

Serial No. 22.

No. 189-G. S., dated Simla, the 13th June 1922.

From—Mr. V. STAINTON, Offg. Secretary to Government, Punjab, Public Works Department, Buildings and Roads Branch,

To—The Secretary to the Government of India, Railway Board, Simla.

Punjab Govern-
ment.

In continuation of this office letter* No. 102-G.S., dated the 2nd June 1922, on the subject of the revision of Railway Risk Notes, I am directed to forward for the information of the Committee a copy of the correspondence noted in the margin, which expresses the views of the officers concerned on the subject.

* Serial No. 9.

1. Letter No. 428-P., dated 17th May 1922, from Superintending Engineer, 2nd Circle. Serial No. 23.

2. Letter No. 2847, dated 19th May 1922, from the Superintendent, Central Workshops Division, Amritsar. Serial No. 24.

2. I am to add that this is but a few of the complaints received from the executive officers, and has been forwarded as it best embodies the general feeling of the executive officers and of the Local Government itself in the matter.

Serial No. 23.

Copy of Memorandum No. 428-P., dated 17th May 1922, from Superintending Engineer, Second Circle, to the Secretary to Government, Punjab, Public Works Department, Buildings and Roads Branch, Simla.

Revision of Railway Risk Notes.

Reference :—Secretary's endorsement No. 1376-G., dated 4th May 1922.

I regret the delay in replying, and even now can only offer the following rather superficial remarks on the Railway Risk Notes now in use.

General.—The foot-note on most of the Forms seems uncalled for. Surely a Railway Administration should be able to render the English form correctly into the vernacular of the people for whom it caters.

Form A.—In theory the conditions are far too favourable for the Railway, and the public is largely at the mercy of a Booking Clerk to say what constitutes "bad condition" or "liability to damage, leakage or wastage in transit." At Lahore the other day the clerk refused to book at Railway Risk for me the wooden framework of a newar bed on the ground that it was in "bad condition," although it was tied together with rope and then sewn up in sacking. I think fuller definition is required.

I also understand that at some stations there is no means of checking the weight of heavy consignments, and in such cases the consignee is compelled to accept the weight entered in the railway receipt as correct. This is not fair. If, when requested to do so, a Railway Administration is not prepared to verify the weight of a consignment, entrusted to it for transportation at Railway Risk, before delivery to the consignee, it has no business accepting the consignment for transportation at Railway Risk.

Form B.—A plea of "robbery from a running train" should not absolve a Railway Administration from responsibility.

Serial No. 24.

Copy of a letter No. 2847, dated 19th May 1922, from the Superintendent, Central Workshops Division, to the Chief Engineer, Irrigation Works, Punjab.

With reference to your endorsement No. 012-S.I., dated 10th May 1922, I have the honour to say that as a result of constant dealings with the railway for the carriage of goods, I very strongly hold the opinion that the Railways should be required to accept their full responsibilities as Common Carriers and should not be allowed to contract out of the same by the use of these so-called Risk Notes. The sole object of these Risk Notes is not to benefit the public but to relieve the railway administration of responsibility which they should not be allowed to shirk. From what I hear, I fear consignors are frequently called upon to execute these risk notes when they would prefer not to do so, by the placing of difficulties in their way. I had a case myself recently where I

had a quantity of oil to despatch. It was tightly soldered in tins and the tins packed in cases, but the railway refused to accept it without the execution of a risk note. I do not consider that they should have the option of refusal in this way so long as the tins were properly closed and packed which was the case. I refused to sign the note and they have refused to book the goods although I was prepared to pay passenger train rates to get the goods away promptly. If this is forced upon a Government Department, what chance has a private person to resist such pressure when he must despatch his goods. He is forced reluctantly to take the risk himself.

When goods are lost in transit and it is constantly happening, every possible resistance is given to the settlement of claims.

It would appear in regard to these risk notes that it has been the policy of Government to protect the Railway, a department of itself; whereas the true function of Government would appear to protect the interests of the public as is the case in Great Britain where the Railways are not allowed to evade their responsibility as common carriers.

If the railways were not allowed to issue these risk notes they would have to face the losses for goods stolen and damaged, a fact which would be likely to cause the Railway Administrations to take adequate steps to protect the goods entrusted to them. That the steps hitherto taken are inadequate is proved by the frequency with which loss is experienced.

With special reference to forms "B" and "H," the general principle of throwing on the consignor the onus of proof that loss of goods is due to "wilful neglect" is entirely wrong. The fact that goods are not delivered or are damaged should *ipso facto* be sufficient proof. How is it possible for the consignor to produce the proof regarding something done at a remote distance or at a place and at a time when neither he nor his agents could possibly be present. It is requiring the impossible, and the obvious intent is to make it impossible for the consignor to obtain redress.

In general business the consignor naturally takes up the attitude that his personal responsibility ceases when he hands the goods in proper condition to the railway. As to the consignee he is forced to accept the risk although possibly the Risk Note was executed without his knowledge or consent because the railway booking clerk refused to book the goods otherwise. I have repeatedly had losses because goods have been sent to me at owner's risk although I did not desire the risk.

For the above reasons I would wish to cut out the use of the Risk Note entirely.

If Risk Note regarding damage or deterioration due to exposure is to be allowed to be issued at all, I would remove the word "loss" from it which is interpreted to cover theft or non-delivery. The liability for loss by theft or non-delivery should in every case rest on the railway who have been entrusted with the goods.

Letter No. S.-149-Ry., dated Poona, the 13th June 1922.

Serial No. 25.

From—K. S. FRAMJI, Esq., B.A., L.C.E., Acting Joint Secretary to the Government of Bombay, Public Works Department,

To—The Secretary to the Railway Board, Simla.

Railway Risk Notes.

With reference to your circular letter No. 505-T.-21, dated 1st/₇th April 1922, I am directed by the Governor in Council to offer the following remarks.

Bombay Government.

2. The subject of railway Risk Notes was placed before the Advisory Committee for consideration at a meeting held on 10th May 1922.

3. To take first Risk Note Form B, I am to observe that it is so worded that disputes as to its exact meaning might easily arise. One member of the

Committee has written a note, part of which is based on the assumption that Risk Note Form B exonerates the Railway Administration for loss, destruction, deterioration or damage, even when these are due to the wilful neglect of the Railway Administration or to theft by railway servants or to the wilful neglect of railway servants, so long as there is not the loss of a complete consignment or of complete packages forming part of a consignment. The wording of Risk Note Form B seems to support this assumption and if the assumption is correct, then the system of working these Risk Notes provides a direct incentive to wilful neglect and dishonesty on the part of Railway servants.

4. The general sense of the meeting appeared to be that the grievances of the commercial public in connection with Railway Risk Notes arise even more from the method of interpreting them adopted by Railway Companies, than from the actual wording of the Notes themselves. The tendency is nearly always to throw the onus of proof on the trader. In addition, the staff of the Railway Companies do not take up complaints in a business-like manner; indeed, the general attitude is described as one of passive obstruction.

5. In the case of Risk Note Form B, with which H may also be considered, the onus of proving exemption by reason of robbery from a running train or any other unforeseen event or accident, should certainly be placed upon the Railway Company. There should also be no exemption of the responsibility of the Railway Company in cases of wilful neglect of railway servants or of theft by them. But the main change necessary is in the attitude of the Railway Companies themselves towards the working of the Risk Note system.

6. It is frequently the attitude of railway servants in demanding Risk Notes in Form A that is responsible for grievances connected with the use of this particular Risk Note. Some railway servants, apparently with the object of clearing themselves of all subsequent responsibility, are alleged to be unfairly critical of packing. The merchant has either to accept carriage on Risk Form A or refer the case to the District Traffic Superintendent and wait till an Inspector comes and inspects his packages. The difficulties on the railway side are obvious and what seems necessary is for a Railway Company to take disciplinary action in cases where its staff have unfairly misdescribed the packing of goods offered for transit, so as to drive a consignor to accept Risk Form A.

Serial No. 26.

Letter No. C.-101-527-G.B., dated Camp Poonmarhi, the 23rd June 1922.

From—J. M. M. PARKER, Esq., V. D., Secretary to Government, Central Provinces, Public Works Department, Buildings and Roads Branch,

To—The Secretary, Railway Board, Simla.

Central Provinces Government.

I am directed to refer to Government of India, Railway Department (Railway Board), letter No. 505-T.-21, dated the 15th-17th April 1922, in which the opinion of this Government is invited on the form, construction and application in practice, of the Railway Risk Notes in use at present.

2. In reply, I am to say that this Government has no information on which to base an opinion. As a committee has been appointed by the Government of India to consider the question of the revision of Railway Risk Notes, it appears unnecessary for this Government to collect information required to enable it to form an opinion on this subject.

Serial No. 27.

Letter No. ^{1650-G.N.} 15-11 of 1920-22, dated Nathia Gali, the 3rd, July 1922.

From—The Hon'ble Sir JOHN MAFREY, K.C.V.O., C.S.I., C.I.E., Chief Commissioner, North-West Frontier Province,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

SUBJECT :—*Revision of Railway Risk Notes.*

North-West Frontier Province.

I have the honour to invite a reference to Railway Department letter No. 505-T. 21, dated Simla, the 15th April 1922, on the subject of the proposed

revision of Railway Risk Notes, and to inform you that owing to the importance of the subject to the trading community in this Province the points raised have been subjected to a full enquiry.

2. The results of this enquiry tend to show, generally, that the Risk Notes at present unduly favour the Railway Administration at the expense of the consignor, and the principles upon which the forms are now based would appear therefore to require modification to protect in a greater degree the interests of the latter. In actual practice it would seem that the general application of the terms of the Risk Notes is so rigid that in the majority of cases the public are able to obtain very little redress from Railway Companies when loss occurs.

3. In regard to the issue raised in paragraph 4(i) of the letter under reference the commercial community of this Province is unanimously of the opinion that the onus of proof, in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration for transport, should be thrown in a large degree upon the Railway concerned. This contention would appear to receive logical support from the fact that arrangements on railways for loading, unloading, and handing over of consignments from one official to another are very complete. For every thing that is taken over, or handed over, in transit between Railway servants, a receipt is taken and entries are made in regular registers. It should, therefore, be an easy matter for Railway Companies to discover the person or persons responsible for loss, damage or neglect. It would of course be necessary that the burden of proving the true value of articles lost should continue to rest with the person claiming compensation, and the Railways should be protected from consignments of a fraudulent nature.

4. In regard to paragraph 4 (ii) of the letter under reference no alteration of the words "loss, destruction or deterioration" used in the Risk Note forms would appear to be required, but modifications should, I think, be introduced to render the Railway Administration responsible not only for the loss of a complete consignment or a complete package out of a consignment, but also for the loss of, or damage to, any part of a consignment or a single package thereof. The omission of the word "wilful" from the Risk Notes might be considered, as well as the definition of the term "neglect" on the basis of the form of neglect for which a Railway servant or agent is liable to be punished departmentally.

No. ^{1063-R}₈₀₋₁₉₂₂-C., dated 28th July 1922.

From—A. C. VERRIEBES, Esq., C.I.E., M.L.C., Secretary to the Government of the Serial No. 28,
United Provinces, Public Works Department, Railway Branch,

To—The Secretary, Railway Board.

Revision of Railway Risk Note Forms.

With reference to the Railway Board's letter No. 505-T.—21, dated the 14th April 1922, I am directed to forward copies of the letters noted below in case they may be useful. United Provinces Government.

2. In view of the highly technical nature of the question this Government are not prepared to express any definite opinion.

1. Letter No. C-51, dated the 10th May 1922, from the Director of Industries, United Provinces, Serial No. 29.
2. Letter No. S. S.-386, dated the 12th May 1922, from Messrs. Martin and Company, Managing Agents, Shahdara-Saharanpur Light Railway, and enclosures. Serial No. 49.
3. Letter No. 341—22, dated the 18th May 1922, from the Secretary, United Provinces Chamber of Commerce, and enclosures. Serial No. 71.

Serial No. 29.

No. C-51, dated 10th May 1922.

From—The Director of Industries, United Provinces,

To—The Secretary to the Government of the United Provinces, Public Works Department, Railway Branch.

With reference to your No. 176-R. C.-60—1922, dated the 5th May 1922, forwarding a copy of Government of India Railway Department letter No. 505-T.—21, dated the 1st/₇th April 1922, I have the honour to report as follows.

2. There are several files on the subject in my office being the outcome of representations of general public who have been dissatisfied over and over again with some of the existing risk notes.

3. *Risk Note "A"*.—This is used when articles are tendered for carriage which are either already in bad condition or so defectively packed as to be liable to be damaged, leakage or wastage in transit. This risk note appears to be a very harmless one, but I have found bad use made of it by corrupt railway officials. Representations have been made to me that on certain railways where godown accommodation for storage of grain bags is grossly inadequate, grain consignments are not accepted unless a consignor is prepared to sign the Risk Note "A". The consignment then lies for days together on unprotected railway platforms till wagon space is available. In the meantime rain comes and spoils the grain. The consignor has to weigh between the possibility of sending any grain at all or getting no wagons and he is compelled to take the risk and sign this note. Similarly, ghee tins are not accepted at some stations without the signing of Risk Note "A" and flagrant instances have happened in which holes have been punctured and ghee taken out all the while because the railway is sheltered behind Risk Note "A". If this risk note is not signed then the parcel is not accepted. There is no doubt that in the case of green hides or fresh fruits or vegetables which are consigned to a long distance, some such risk note has to be taken, but it is my definite opinion that great care is necessary that the discretion be not abused. The case of the grain dealer is a very hard one and the Railway Company should extend their storage accommodation and not get out of the responsibility by the transparent subterfuge of insistence on this risk note being signed in the rains when they know all along that the grain bags would be exposed to the inclemencies of weather and will deteriorate before despatch.

4. Risk Note "B" and "H" can be taken together. Everybody knows that Risk Note "B" is a note executed by the consignor when he prefers to send his goods on payment of a distinctly lower tariff. Naturally the bailee, *i.e.*, the Railway Company, is absolved from some of the responsibilities that should attach to a bailee. The relevant words of the risk note are as follows :—

The administration is held harmless from all responsibility for any loss, destruction or deterioration of a consignment from whatsoever cause except where the loss is caused of a complete consignment or of one or more packages of consignment due either to the wilful neglect of the railway administration or to thefts by its servants or to the wilful neglect of its servants provided that the term wilful neglect be not held to include fire or robbery from a running train or any other unforeseen event or accident.

It comes to this that the consignor has no remedy unless the loss is complete of the consignment or complete packages of the consignment. There is no remedy for pilfering by breaking bulk.

5. This has to be brought about by the wilful neglect of the Railway administration, or

By theft by railway servants or any other person by wilful neglect of the part of the Railway servant. Theft in a running train does not constitute wilful neglect and how easy is it to put down any loss to this.

6. The railway authorities are not compelled to find out what had happened to the articles missing. They must prove loss in transit otherwise the article could be secreted by the Receipt Clerk and short delivery made. When the railway authorities receive a consignment short, they must set in train detailed enquiry and should be in a position before a Court of Law to show that when the consignment was received at its destination part of the

things were missing. The other point that has to be made clear is that the use of the word "Wilful Neglect" is a very unhappy one. It would be better to use the simple word 'neglect'. We are in the domain of Civil and not Criminal Law. Neglect can be proved by evidence. If the standing orders are that a carriage should be packed in a covered wagon, and yet it is despatched in an open wagon, and it catches fire on the way then it is loss by neglect. Nobody knows about the mentality of the individuals. You judge of the *mens rea* from the *actus reus*. There are certain circumstances that show that there was some neglect and it is absurd to ask for additional circumambient evidence to make it into wilful neglect. On the question of onus, we have the High Court ruling reported in the Indian Law Report XXIX, All. page 418, wherein Richards, C. J., and Banerji, J., distinctly held that when a sugar consignment was received short "unless it could be shown that either the loss was caused by theft by one or more than one of the Railway servants, or unless it could be shown that the loss was caused by the wilful neglect, the Railway were not liable." The onus was not on the railway. On the contrary the Railway were not liable unless the plaintiff, *i.e.*, consignor, could show that the loss was occasioned by the theft or wilful neglect of the railway servants. This ruling has been very unfortunate and therefore some statutory alterations have to be made to contravene its defects. I find that recently there has been a ruling of the Bombay High Court, Indian Law Report, XLV, Bombay, page 1201, Ghela Bhai *versus* East Indian Railway Company. There it was held that risk note "B" can only come into operation when it was proved that the goods *had been lost*. The consignor's claim in the absence of any proof on the part of the Railway would be unanswerable.

7. My suggestion is as follows:—

Risk Note "B" must be retained because the consignor takes some of the risks of which the bailee is absolved and yet manages in majority of cases to despatch his consignments at small cost without loss. To save him from the neglect of the railway authorities, I would make the wording of the risk note as follows:—

* * * * *

—harmless and free from all responsibility for any loss, destruction, deterioration of, damage to *and abstraction* from, the said consignment from any cause whatsoever (provided that Railway Administration gives satisfactory proof of loss, destruction, deterioration of, damage to and abstraction from the consignment during transit) except for the loss of a complete consignment or one or more complete packages forming part of a consignment, deterioration, damage or abstraction from the consignment due either to the neglect of the Railway administration or to theft by or to the neglect of its servants, etc.

In the proviso as the term wilful neglect has been eliminated we should keep to the word neglect only and the proviso should therefore run as follows:—

Provided the term neglect be not held to include fire, robbery from a running train or any other unforeseen event.

8. In the case of a robbery from a running train, there must be evidence that the breaking of the seals of a wagon was noted at a particular station in transit and not merely at the destination otherwise portions of the consignment may be abstracted at this end, and seals might be reported to be broken at the station of the destination and nowhere previous. If seals are not reported broken during the journey there can not be a theft from a running train.

9. The sum and substance of my proposals comes to this—

- (1) I would throw the onus of proving the loss of the consignment or part of it on the Railway first so that the consignor may then be in a position to prove the exceptions which would give him the benefit of compensation (*vide* Bombay ruling referred to).
- (2) I would drop the word "Wilful neglect".
- (3) The onus of proving the exception will remain on the consignor.
- (4) I would make abstraction from a parcel into a cause of action.
- (5) I would insist on the proof of the seals being broken *en route* in those cases, in which there is an allegation of loss by robbery from running train.

Serial No. 30.

No. 62-Ry., dated Madras, the 10th August 1922.

From—The Secretary to the Government of Madras, Public Works Department, Railways.
To—The Secretary to the Government of India, Railway Department, (Railway Board).

*Revision of Railway Risk Notes.*Government
of Madras.

I am directed to acknowledge the receipt of your letter No. 505-T-21, dated 15th-17th April 1922, in which the Committee appointed by the Government of India to consider the revision of Railway Risk Notes invite the views of the Government of Madras on the form, construction and application in practice of the Risk Notes in use at present, with particular reference to the following points :—

- (1) Whether there should be any modification in the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration.
- (2) Whether any alterations should be made in the risk note forms in such a manner as to secure for the consignor the right of compensation arising from the wilful neglect or criminal acts of railway employees.

2. In reply I am to state that the Government of Madras have given the matter their careful consideration and are of opinion that as the railway risk note forms stand at present, they afford to the Railway Administrations and their employees an unduly complete immunity from all responsibility from any loss or destruction or deterioration of or damage to any consignment, since the burden of proof is thrown upon the consignor to show that the loss, etc., is due to the wilful neglect of the Railway Administration or the wilful neglect or the criminal acts of its employees. As observed by the Railway Police Committee the wide protection thus given to Railways by the different forms of Risk Notes indirectly encourages theft and it is very difficult to prove the guilt of the offender where the parties committing the theft are the Railway officials themselves.

It may perhaps be argued that the Railway Administrations already do their utmost by the issue of stringent orders to their subordinates, to inculcate vigilance and care in handling the goods entrusted to them. The widespread complaints of shortcomings in this respect which have led to the appointment of a Committee of inquiry on the subject of Risk Notes are sufficient evidence that these measures have proved inadequate, and it is obvious that they must be so, so long as the Railways are enabled to shelter themselves from pecuniary liability to the extent which the present forms of Risk Note render possible. If, by a modification of the terms of these documents, the pecuniary liability of the Administration is rendered more easily enforceable, the Madras Government do not doubt that it will find means to bring home that responsibility to the subordinates who actually handle goods in transit, and a much-needed improvement will result.

3. The Government of Madras do not consider it necessary to enter at length upon the various ways in which the existing system can be worked so as to take advantage to the utmost of the undue protection which the forms of Risk Note now confer. Most of these have been touched on in the speeches delivered in the course of the debate in the Legislative Assembly on the Resolution which gave rise to the present inquiry. Nor is the Madras Government much impressed by the argument that an increase in the Railway Administration's liability will result in a raising of the owner's risk rates. They are disposed, in fact, to think that the arrangement by which a Railway Administration is allowed by the offer of a reduced rate, to contract itself out of its responsibilities is contrary to public policy. Under the existing system, as in the case of pilferage at ports, the failure of the administrations who ought to be bailees of goods, to enforce adequately measures to prevent theft, leads to wholesale demoralisation, first of their own staff; second, of the persons to whom opportunities of theft are presented by their negligence or connivance; and lastly, of the consignor and consignee. Whether in fact it would be necessary to raise the rates materially if the changed conditions were introduced, is a matter for detailed inquiry regarding which this Government offers no opinion beyond observing that it should not, *prima facie*, cost the Railway administrations very much more to substitute, other things being equal, a reliable and efficient service for a service which leaves much to be desired in both respects; and that, at any reasonably enhanced rates, it would in the long run be for the benefit of all concerned to effect such a substitution.

4. I am to say therefore that, for the reasons explained, the Madras Government would reply to both the questions propounded by an emphatic affirmative,

Replies received from Railway Administrations to Government of India letter No. 505-T.-21, dated 15th-17th April 1922.

No. T.-8513, dated Udaipur, the April 1922.

Serial No. 31.

From—The Manager, Udaipur-Chittorgarh Railway,

To—The Secretary, Railway Department (Railway Board), Simla.

Your No. 505-T.-21, dated 17th April 1922.

With reference to your above I have the honour to say that the practical experiences of Railways and grieved experiences of the public who have had any dealings with parcels or consignments booked under Risk Notes are that the Risk Notes have been interpreted by the Railway employees dealing with and handling such parcels and consignments as licenses to pilfer. The whole principles of the Risk Notes are wrong. No loopholes for Railways to evade responsibilities and obligations should be permitted. On acceptance of parcels and consignments for carriage from station of booking to destination, such parcels and consignments should be the absolute care of the Railways to deliver correctly in condition and weight as received at booking station. No parcels and consignments to be accepted unless adequately packed to stand the handling in transit. The public must be impressed that the Railways are willing to give them a square deal provided their goods are strongly packed before, tendered for booking.

Udaipur-
Chittorgarh
Railway.

No. 28-C.-24, dated Rangoon, the 13th May 1922.

Serial No. 32.

From—The Agent, Burma Railways,

To—The Secretary, Railway Department (Railway Board), Simla.

Railway Risk Notes.

With reference to your letter No. 505-T.-21, dated the 17th April 1922, I beg to express the following opinion on the subject:—

Burma
Railways.

(i) That the onus of proof in a claim for compensation arising out of the loss of goods entrusted to a Railway administration for carriage should remain with the consignor, as at present.

(ii) That the words "loss, destruction or deterioration" used in the risk note forms need not be altered, added to or defined.

2. If Railways are to be asked to accept a greater responsibility in respect of goods carried at owner's risk rates, I think they are entitled to ask—

(a) for the enhancement of owner's risk rates to make the difference between these and the railway risk rates approximate to the value of the risk involved;

(b) for the protection of goods by packing not easily removeable by hand and for full and proper addresses;

(c) for the substitution of the term "wilful misconduct" in lieu of "wilful neglect"; and

(d) for the exemption from liability for both robbery and theft from a running train.

No. 9806, dated the 20th May 1922.

Serial No. 33.

From—The Agent, Bengal-Nagpur Railway,

To—The Secretary, Railway Department (Railway Board), Simla.

Proposed Revision of Railway Risk Note.

With reference to your letter No. 505-T.-21, dated the 17th April 1922, I beg to inform you that the question of revising the terms of Risk Note "B" has been discussed by the Indian Railway Conference Association on several occasions in the last few years, and is a subject on which Railways have expressed their opinion from time to time. There is a strong feeling among the Railway

Bengal
Nagpur
Railway.

Administrations that any increase in the responsibility placed on Railway in respect of goods carried at Owner's Risk rates must be accompanied by an enhancement of such rates. Having regard to the conditions obtaining in India for the transport of goods by rail I consider there is ample justification for this feeling. It is an undoubted fact that Railways in India are obliged to pay far more attention to the safety and security of goods than in England, and are much more likely to be defrauded or robbed than are English Railways.

I agree with the resolution of the Traffic Committee of the Indian Railway Conference Association where it was decided that the charge for goods carried at Railway Risk should exceed the charge for goods carried at Owner's Risk, only by an amount approximating the value of such risk. I consider that that value would be represented by a margin of from 15 to 25 per cent. according to class and value of goods, and nature of packing.

With regard to Risk Note Forms "B" and "H" I am prepared to accept that the onus of proving that there was no wilful neglect of its servants be placed on the Railway Administration.

The point raised in paragraph 4 (ii) of your letter regarding the alteration of, addition to, or definition of the words loss, destruction or deterioration used in Risk Note forms, if conceded, may greatly increase the responsibility of Railways in respect of goods carried at Owner's risk. I do not consider that the proposal should be given effect to unless Risk Note forms are altered in other respects also by which Railways would be safeguarded from being compelled to admit claims unfairly.

These alterations would be :—

- (1) The term "wilful neglect" should not be held to include fire, robbery or theft from a running train. At present the word "theft" does not appear in Risk Note Forms "B" and "H".
- (2) The term "wilful misconduct" should be substituted for the term "wilful neglect" as the latter term is somewhat vague.
- (3) Liability for pilferage or misdelivery should not be accepted unless goods are protected by packing not easily removeable by hand, and are fully and properly addressed. It is worthy of note that the acceptance of responsibility by the English Railways for pilferage in certain cases is dependent on these conditions.

Serial No. 34.

No. A.T.-2206-1-50, dated Trichinopoly, the 15th May 1922.

From—The Agent, South Indian Railway,

To—The Secretary, Railway Department (Railway Board), Simla.

Revision of Railway Risk Notes.

South Indian
Railway.

With reference to your letter No. 505-T.-21, dated 15th-17th April 1922, I beg to offer my views as follows :—

It is no doubt a hardship to consignors, who consign goods at owner's risk to be told on technical grounds that their claims for compensation for goods lost or damaged could not be entertained, as the risk notes executed by them absolve the Railway from responsibility; but on the other hand if provision is made for claims to be accepted on a more liberal scale, there should be some protection for the Railways from being mulcted by heavy claim payments, which might not have been the result of irregular and careless work on the part of the Railway staff, it is therefore desirable to design a 'via media' between

these two and this could only be achieved by a revision of the Risk Note forms, particularly the terms of Form (B).

2. The revision of this form depends on the two issues which have been framed in paragraph 4 of your letter and my views on them are:—

- (1) The onus of proof should entirely rest upon the consignor in a claim for compensation arising out of the loss of goods either in whole or in part, as, if it was otherwise, it would be easy for consignor to make claims and demand payment for loss, damage or deterioration to goods caused on any account;
- (2) and the words loss, destruction, or deterioration used in Risk Note forms should be amplified in such a manner as to show definitely when and under what conditions compensation could be rightly claimed by consignors.

3. So far as this Railway is concerned, practically as a matter of policy, all claims have been dealt with on equitable grounds irrespective of the protection afforded by the risk notes on purely technical grounds.

No. 9834-T., dated Bombay, the 22nd May 1922.

Serial No. 35.

From—The Agent, Bombay, Baroda and Central India Railway,

To—The Secretary, Railway Board, Simla.

Revision of Owner's Risk Notes.

With reference to Railway Board's No. 505-T.-21, dated 17th April 1922 I beg to submit the following observations:—

Bombay,
Baroda and
Central India
Railway.

1. It is very desirable that the relations between Railways and their customers in regard to an agreement on the question of the relative rights and obligations of both parties under the Owner's Risk Notes should be placed on a more satisfactory basis than they are at present. The subject is a difficult one, and it can be settled only by a frank acceptance and understanding of the conditions attaching to the problem.

2. The question was dealt with in England and revised Risk Note conditions came into force in 1909, but it is claimed by the Railways in India that the Risk Note in force in India is more suited to the conditions found in this country. In India there are gangs organised for robbery on Railways. The assistance from the public in preventing practices of dishonesty is entirely wanting. The Preventive and Police services are not on the same high standard of efficiency of those in England; and trade routes traverse large tracts of desert and jungle country.

3. The Indian Risk Note gives a greater degree of exemption from liability, but on the other hand, the differences between the R. R. and O. R. rates are greater in India than in England.

4. These factors must be recognised by both sides. If the trader demands relief and the acceptance by Railways of a greater liability, he must agree to pay a higher premium, and any alteration of the conditions attaching to the Risk Note may involve a revision of the general classification of goods.

5. With regard to the point (1) of paragraph 4, there seems to be some doubt whether the burden of proof of wilful neglect on the part of the Railway servants lies with the trader. The Courts in the decisions that have been given in cases of loss of goods carried under the condition of Risk Note Form "B" have clearly indicated that the Railway must lead evidence and to offer some reasonable explanation for the loss. I am of opinion that it will be difficult to alter the wording of the risk note which reads "for the loss of

a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of the Railway Administration or to theft by or to the wilful neglect of its servants," and that it would be sufficient to have it known that Railways must lead evidence. If on the other hand the Committee can devise some clause clearly to define how the burden of proof lies the dissipation of all doubt that would thereby be effected would be welcomed.

6. In regard to the 2nd point on which my special consideration is invited, I understand it is suggested in sub-paragraph (ii), paragraph 4 of your letter, that the liability of the Railway for loss, destruction or deterioration of goods covered by Risk Note "B" should be substantially increased?

For the reasons given in paragraph 2 of this letter I am opposed to making any alterations in the wording of the conditions unless a general revision is made of the method of calculating the Owner's Risk Rates and making due compensation for the additional responsibility that may be imposed.

Serial No. 36.

No. 4518-T.-20, dated Bareilly, the 22nd May 1922.

From—The Agent and Chief Engineer, Rohilkund and Kumaon Railway,

To—The Secretary, Railway Board, Simla.

Railway Risk Notes.

**Rohilkund
and Kumaon
Railway.**

With reference to your letter No. 505-T.-21, dated 17th April 1922, I beg to say that if Railways are to be asked to accept a greater measure of responsibility in respect of goods carried at Owner's Risk Rates such as would lessen the protection now afforded to railways the result must be that rates must be increased to meet increased responsibility and the tendency will be to eliminate Owner's Risk Rates altogether.

The net result will be beneficial neither to the Trading community nor to Railways as the former will be called on to bear the burden of rates which perhaps traffic cannot carry while the latter will be faced with an increasing charge on revenue to meet claims, a large number of which it has been out of their power to prevent.

Moreover the Trading community would have to bear the additional expense in providing fully and properly addressed goods in thoroughly secure packing which naturally Railways would be entitled to demand.

With reference to the special points raised in your above quoted letter I beg to say :—

(1) I do not consider the onus of proof should be shifted from the Plaintiff to the Railway Company. The onus should justly rest on the claimant and transference to the Railway will materially prejudice the latter.

(2) I do not consider amendment on the lines suggested is necessary. Sufficient protection is at present given under the Risk Note.

I would however suggest that amendment be made to the effect of adding the words "or theft" in the second last line of Risk Note Forms 'B' and 'H' after the word "robbery" as the latter term is too loose and inapplicable to most conditions of loss from running trains.

Serial No. 37.

No. T.-3454, dated the 13th May 1922.

From—The Agent, Madras and Southern Mahratta Railway Company, Limited,

To—The Secretary, Railway Board, Simla.

Revision of Risk Notes.

**Madras and
Southern
Mahratta
Railway.**

With reference to your No. 505-T.-21, dated the 15th-17th April 1922, I have the honour to forward herewith a note expressing my opinion on the proposed revision of Railway Risk Notes

Owner's Risk Notes.

1. *Legal Liability of Railways.*—In regard to the question of the party on which the onus of proof for "wilful neglect" is to rest, I consider that the Conference of 1918 was correct in stating that the legal aspect of the Risk Note question could not be ignored, and in drawing attention to the fact that Courts in India try to ascribe negligence to any unusual detention during transit. The Conference of 1918 objected to the inclusion of the words "or negligence" in the revised form of Risk Note as approved by them. Without in any way proposing to contract railways out of reasonable liability, it is evident that the word "misconduct" is preferable to the word "neglect" as giving a clearer legal definition. In this connection attention is drawn to the meaning of the term "wilful misconduct" as shown in the extract from Halsburys Laws of England, Volume 4, page 34, which states "misconduct is not necessarily established by proving even culpable negligence. Misconduct will not be presumed from the mere fact of misdelivery or of unreasonable delay, or of unexplained injury, but when goods are not at all delivered and no explanation is given to the consignee, there is evidence of misconduct." This possibly explains the reason for the limitation of the liability of Railways to a complete consignment or package when the Indian form was revised in 1917. There would be a very wide difference in the effect of the risk note on the liability of Railways, should the onus of proof for "wilful neglect" be fixed definitely on Railway Administrations. In practice this would be likely to result in Railways being unable to obtain relief from liability for damage to goods in transit, so that liability on Railways for goods booked under risk note would become practically identical with that for goods booked under Railway risk.

2. *Traders' views.*—The Traders' side of the case appears to be that the present risk notes give railways an undue exemption from liability, and that the difference between Owner's Risk and the Railway Risk rate is too great, forcing them to accept the Owner's Risk rate as the trade rate, and in support of their views they make certain contentions which cannot be substantiated. In answer to these contentions it is remarked that the gain on the lower rate covers the value of the actual losses, otherwise the merchants would obviously be more favourably placed by adopting Railway Risk rates. Even if it is accepted, however, that the difference between the two rates is too great, and that the Railway Risk rate is somewhat higher than is justified, it does not follow that the present Owner's Risk rates are not reasonable. If the Owner's Risk rates are reasonable in consideration of the present liability of Railway Administrations under the existing form of Risk Note, it is evident that any increase in Railway liability will necessitate some corresponding increase in the Owner's Risk rates. Any difference found to be excessive in the rates can be modified by increasing the Owner's Risk rates as well as by reducing the Railway Risk rate.

Another objection by Traders is, that since certain descriptions of goods are always carried at Owner's risk, the Railway staff are aware of this and make use of their knowledge by pillaging consignments of these goods in preference to those classes of goods which are carried at Railway risk. The assumption here is, that Railway Administrations take no interest in tracing thefts or losses from goods carried at Owner's risk since they can repudiate liability under the Risk Note, and that the Railway staff are not punished. This is far from being the case. All losses are reported to the Police, and whenever a case can be traced the staff are punished. Further, the assumption that the majority of the thefts are due to Railway personnel cannot be proved to be correct. There are organized gangs of thieves, and it would be absurd to contend that such gangs differentiate between goods carried at Owner's risk and Railway risk.

3. *Responsibility of Railways.*—The Railway Board have stated that Railways should not contract themselves out of liability for things of which they ought reasonably to be held responsible. Admitting the force of this statement, the question arises as to the exact interpretation of what is the reasonable responsibility of Railways under an Owner's Risk rate. Objections to

adopt the English practice as recorded in the note of the Conference of 1910, and endorsed by the Conference of 1918, apply with even additional force to-day, since theft and robbery have greatly increased for various reasons during the last few years. It is not contended that Railways should not be held responsible for taking reasonable measures to guard against theft or loss; this has been admitted on Railways generally, and action has been taken to improve the system of Watch and Ward and Police supervision in accordance with the recommendations of the Police Committee of 1920, but there is no disguising the fact that the losses to Railways from theft are and will continue to be considerable, and that the conditions obtaining in India are far less favourable to the safe carriage of goods than they are in England.

After taking all reasonable precautions the losses incurred on the carriage of goods can be made good only in one way, *viz.*, out of Railway earnings. If, therefore, by revised legislation a greater responsibility is placed on Railways under the Owner's Risk conditions, it is clear that the Owner's Risk rates will have to be raised to meet this responsibility.

4. *Difference between Owner's Risk and Railway Risk rates.*—In regard to the question of the justification of the existing differences between the Owner's Risk and Railway Risk rates, it is remarked that the recommendation of the Advisory Committee appointed in England in 1920, that the difference between a rate as at Railway risk, and a rate at Owner's risk shall be as nearly as can be ascertained be equivalent to the risk of which the railway is relieved when carrying merchandise at Owner's Risk conditions, appears to be a fair one, but it is not an easy matter to determine this equivalent. In this connection we have the views of the special meeting of the Traffic Committee in April 1921. The Traffic Committee agreed that the existing practice was wrong in principle, and were of opinion that the difference in the rates was excessive in many cases. Their suggestions for dealing with this by grouping commodities according to value involve, however, an alteration in the classification of certain commodities, and the examination of every entry in the general classification. The Traffic Committee pointed out that sufficient data are not available to permit of the actuarial risk being appraised, and they mentioned that the quotation of revised railway risk rates which traders might freely use might bring far-reaching results. They recorded the opinion, that any increase in the responsibility placed on Railways would necessitate considering an increase in Owner's Risk rates, and might involve a revision of the General Classification.

The assumption that the difference between the Railway Risk rate and Owner's Risk rate is excessive in many cases is by no means proved and requires careful examination. It must not be forgotten that insurance premia are based largely on the value of the commodity insured as well as on the risk and time involved in the transaction. In fixing Owner's Risk rates, special reasons in addition to that of the risk involved, have to be taken into consideration, and except in the case of goods carried in small quantities, it is seldom that the Owner's Risk rate is based solely on the question of risk. Owner's Risk rates are often quoted with other conditions attaching to them such as a minimum weight condition, reduction for distances, and the proportion of difference assigned to the actual risk is very often much smaller than would appear.

It is evident in actual practice, the difference between the Railway Risk and Owner's Risk rates, if worked out at a percentage on the value of the commodity carried, will give a percentage varying directly with the distance to be carried. There should be the same relative risk of loss or damage at the loading and destination stations, which may be held to be a reasonable liability of Railways, and there will be a proportionately greater risk in transit for every mile carried. If it is accepted as a correct principle that the Railway Risk rate should be proportionate to the Owner's Risk rate, and include an addition to cover insurance, it will be necessary to revise both the Schedule of maximum and minimum class rates and the General Classification.

The existing Classification provides for Owner's Risk rates, and these must, therefore, be quoted. It is submitted, however, that Railways should

not be bound to quote Owner's Risk rates. On the other hand Railways should be bound in every case in which an Owner's Risk rate is quoted to quote also a higher rate at Railway risk which, it is suggested, should not exceed a given percentage for the same class of goods carried under conditions otherwise equal, subject to the maximum class rate authorised in the schedule of maximum and minimum class rates not being exceeded. The question of what this percentage addition to an Owner's Risk rate should be is a difficult one to solve. It is suggested, that the simplest method would be to add a percentage increase to the freight charge, differing in accordance with the class in which the commodity is placed. There would be no need to quote a Railway Risk rate, but a small sum for every rupee or portion of a rupee of freight might be added to the Owner's Risk rate. It will be a matter for close investigation to work this out in detail, but as an example the following figures are given below :—

			Percentage in Freight.	Per every or Rupee of freight.
1st class	...	...	6 per cent	0 1 0
2nd „	...	...	9 „	0 1 6
3rd „	...	...	13 „	0 2 0
4th „	...	...	16 „	0 2 6
5th „	...	...	19 „	0 3 0
6th „	...	...	22 „	0 3 6
7th „	...	...	25 „	0 4 0
8th „	...	...	28 „	0 4 6
9th „	...	...	31 „	0 5 0
10th „	...	...	34 „	0 5 6

It will be noticed that the percentage difference in freight between Owner's risk and Railway risk would rise class by class for the reason that, generally speaking, the more valuable a commodity is, the higher it is placed in the classification. This is not always the case, however, because certain articles are placed in the higher class owing to the expense involved in their carriage, and certain exceptions would be necessary. The question is clearly a complicated one and without the Railway Board's consent to revise the General Classification, it will probably be impracticable to fix upon a simple method for estimating the correct equivalent for the difference between a rate at Railway risk, and at Owner's risk.

5. This leads to the conclusion, that while the question can be dealt with by providing an alteration in the present legal liability of Railways under the Risk Note, with at the same time the consideration of the effect such alteration will produce in the way of an enhancement of the existing Owner's Risk rates, an alternative method of relief to Traders could be furnished by investigating a reduction of the difference between the existing Owner's Risk and Railway Risk rates, with a view to render the Railway Risk rate a reasonable alternative trade rate to be used at the discretion of Traders.

6. The conditions introduced in England in 1909 as a result of the Board of Trade Conference held in 1905 deserve study. When considering the extension of the liability of Railways two alternatives were proposed :—

- (1) To enlarge the liability of Companies under their contract note so as to include for example, cases of gross or serious negligence; and.
- (2) To draw up a list which might be inserted in the consignment note of specific instances in which compensation would be paid.

The first alternative was ruled out owing to the difficulty of finding a form of words to substitute for the term "wilful misconduct" which would be free from ambiguity, and would not unfairly enlarge the risk of Railways, and the probable necessity for legislation should this method be adopted.

The second alternative was agreed to, and three classes were finally adopted as embodying a list of cases where, subject to the conditions of the consignment note, Railways would accept liability.

7. As the result of this the English form provides that Railways shall not be liable for loss, damage, misconveyance, misdelivery or detention of the goods booked at Owner's risk, except upon proof that such loss, damage, etc., arose from the wilful misconduct of the Company's servants, but nothing in this condition exempts the Company from any liability they might otherwise incur in the following cases of non-delivery, pilferage, or misdelivery, *viz* :—

- (i) Non-delivery of any package fully and properly addressed unless such non-delivery is due to accidents to trains or to fire.
- (ii) Pilferage from packages of goods protected otherwise than by paper or other packing, readily removable by hand, provided the pilferage is pointed out to a servant of the Company on or before delivery.
- (iii) Misdelivery where goods fully and properly addressed are not tendered to the Consignee within twenty-eight days of despatch.

These conditions throw the onus of proof that pilferage, etc., was not due to the wilful misconduct on the part of their servants, on to Railway Administrations, in those cases where the Railway accepts liability. Railways are, however, protected by certain expressed conditions in regard to the packing and addressing of goods.

All these conditions are not suitable, however, for adoption in India. Condition (ii) would not have the effect in actual practice of limiting the liability of Railways for the reason that pilferages are caused largely by the systematic plundering of goods, the thieves using a pointed instrument in order to cut through the covering of bags, packages, etc.

Condition (iii) is obviously unsuited to Indian conditions. Condition (i) might be accepted in India but provided that—

- (a) the term "wilful misconduct" shall be substituted for "wilful neglect";
- (b) that Railway Administrations shall be exempted from liability both for robbery and theft from a running train; and
- (c) that it is agreed that the existing Owner's Risk rates should be investigated with a view to consideration of what enhancement, if any, will be necessary.

It is considered, however, that the above proposals are not likely to meet with the approval of Traders. The only relief afforded would be that the onus of proof that the non-delivery of a fully and properly addressed package was not due to wilful neglect on the part of Railway Servants, or was due to fire, theft, or robbery from a running train, etc., would be fixed presumably on Railway Administrations.

As regards pilferages it appears impracticable to prescribe a condition for fixing reasonable liability on railways which is suited to Indian conditions.

If the onus of proof that these are not due to "wilful neglect" is fixed on railways, an enhancement in Owner's Risk rates will be unavoidable as referred to in paragraph 1.

8: The alternative method of relief by some modification in the difference between the existing Owner's Risk and Railway Risk rates, will therefore, it is considered, give a more satisfactory result, but this will be a complicated question involving a revision of the Schedule of Class Rates and the General Classification, as explained in paragraph 5.

Letter No. R. C. N. 0, dated Bombay, the 25th May 1922.

Serial No. 38.

From—KILLICK, NIXON & COMPANY, Agents, the Guzerat Railways Company,
Limited,

To—The Secretary, Railway Board, Simla.

In reply to your letter No. 505-T.-21, dated 15th-17th April last, we would say that, writing from the point of view of equity to both Railways and Merchants, we consider that the present situation as regards Railway Risk Notes is unsatisfactory. Guzerat
Railways.

While we realise that Railways must be protected from the possibility of unscrupulous persons, etc., forcing bogus compensation from Railways for goods lost or damaged in transit by rail, we consider that traders generally need considerably more protection from Railways who practically always succeed in evading their responsibilities in connection with loss or damage to goods carried by rail under the several clauses of their various Risk Notes.

Railways can and do refuse to carry goods unless certain Risk Notes absolving them from all liability for loss or damage to goods in transit are signed and we know of cases where Railways have, in the first instance, refused to carry perfectly well-packed articles unless Risk Note "A" has first been signed.

We further consider that Railways trade too much on the ignorance of the general public regarding railway law in connection with claims against Railways as public carriers. While we agree that in law, the onus of proof that due care has been exercised by a Railway in carrying goods from one station to another, has to be borne by the Railway concerned, the fact remains that a railway, in practically every claim case, merely denies liability under a Risk Note and thus repudiates the claim, by which action the Railway actually places the onus of proof, that the claim preferred is a valid one, upon the claimants, which is contrary to the spirit of the Railway Act.

To conclude, we consider that as matters are at present the Risk Notes afford too much protection to carrying Railways and that modifications should be introduced which would ensure that consignors and consignees are given a reasonable chance of enforcing *bond fide* claims for loss or damage to goods while in the custody of a carrying Railway. At present it is all to a Railway's interest to force consignors to send their goods at "Owner's Risk" and consequently a prohibitive rate to cover "Railway Risk" is levied. The result of this is that in most cases it is cheaper to pay "Owner's Risk" rates and insure consignments separately with outside Companies. We would suggest therefore that a slightly modified form of "Railway Risk" Note be evolved and issued at rates slightly in excess of the present "Owner's Risk" rates, but under which a Railway must pay if goods are lost or damaged while in their custody.

Letter No. 3549-B.-T., dated Calcutta, the 25th May 1922.

Serial No. 39.

From—LIEUTENANT-COLONEL H. A. CAMERON, C.I.E., R.E., Agent, Eastern Bengal
Railway,

To—The Secretary, Railway Board, Simla.

With reference to the Railway Board's circular letter No. 505-T.-21, dated 15th-17th April 1922, regarding the revision of Railway Risk Notes, I beg to remark as follows:— Eastern
Bengal
Railway.

Risk Note Form A.—Our policy in the case of this Risk Note is to claim protection only when the damage, leakage or wastage arises from the bad condition in which the goods were tendered for despatch.

If the damage, leakage or wastage arises from negligence on the part of the Railway not connected with the condition in which the goods were tendered, we do not repudiate liability.

Damage, leakage or wastage includes loss by theft induced by the bad condition—as for instance, weak packing.

In the case of jute such remarks as are shown below are made on the Risk Note according to the varying conditions in which it is offered for despatch.

Condition.	Remarks to be made on Risk Note.
(1) In wet or damp condition ...	(1) " $\frac{\text{Bales}}{\text{Drums}}$ in wet condition liable to damages or deterioration, to loss in weight and to loss of marks in transit."
(2) Damaged, discolored or "daggied" ...	(2) " $\frac{\text{Bales}}{\text{Drums}}$ in damaged, discolored or daggied condition."
(3) Loosely tied ...	(3) "Loosely tied, liable to the loss of marks, to marks becoming indistinct and the loss of weight in transit."
(4) In bales with gunny labels of a smaller size than 15" x 12".	(4) and (5) "Not properly labelled liable to loss of marks in transit."
(5) In bales, the gunny labels of which have not been affixed at the time of pressing and lashing.	

In the case of other traffic, the Risk Note is demanded when the condition is actually bad, or the packing is of a nature insufficient to protect the contents.

There has been very little trouble as regards this Risk Note and the decision of the Railway has very seldom been contested in court.

The value of claims repudiated under this Risk Note during the three months ending 31st March 1922 was Rs. 533 which works out to Rs. 2,132 per annum.

Risk Note Form B.—Our general policy is not to repudiate liability for a complete consignment or one or more complete packages on the grounds of a running train robbery unless there is some evidence to show that a running train theft has occurred. For instance in addition to a seal being defective, a door must also be found open or there must be evidence in the wagon itself that it has been visited by thieves.

The value of claims repudiated under this Risk Note during the three months ending 31st March 1922 was Rs. 908 which works out to Rs. 3,632 per annum.

These Risk Note rates are no doubt beneficial to the merchants on this Railway as will be seen from the following:—

The rates for "Piece-Goods" from Calcutta to Bogra (a large centre) compare as follows:—

	Rs.	A.	P.	
Piece-goods, cotton or wollen in bales, press packed, and	R. R.	0	15	11 per maund.
bound with iron bands or packed in boxes or cases.	O. R.	0	12	2 " "

Difference 0 3 9

If merchants were losing on the transaction they would not hesitate to pay an extra 0-3-9 pies a maund on a commodity worth some Rs. 200 per maund.

Although there are great differences in rates at the Railway and Owner's Risks, with regard to some commodities, there does not appear to have been any demand for a special Railway Risk rate, and if any such quotation were made, I think, it would be a dead rate and the traffic would continue as at present to be booked at the Owner's Risk rate.

Further, the Owner's Risk rates give a lot of difficulty in connection with disputes as to condition of consignments and packing. The owner takes the risk himself and saves the extra cost of packing, but if the responsibility for shortage is to rest with the Railway, we would have to insist on a better packing in many cases and examine condition of consignments more closely.

In regard to the two points which the Railway Board desire should receive special consideration, I beg to state that:—

- (i) If the onus of proof is to be thrown on the Railway to any extent, it will be found difficult to establish such proof, and the result would be the payment of the claim. I would therefore suggest that if Railways are to accept a greater measure of responsibility in respect of goods carried at Owner's Risk rates, the whole question of Owner's Risk rates be examined with a view to these rates being enhanced where necessary to make the difference between Railway Risk rates and Owner's Risk rates approximate to the value of the risk involved in each case.
- (ii) The term "wilful neglect" is already too wide and any attempt at modification with a view to increasing the liability of Railways will in practice result in throwing virtually all liability on the Railway.

No. G. C.-56-14864, dated Jodhpur, the 27th May 1922.

Serial No. 40.

From—The Acting Manager, Jodhpur-Bikaner Railway,

To—The Secretary to the Government of India, Railway Board, Simla.

In reply to your No. 505-T.-21, dated 1st April 1922, I beg to say that this Administration has no remarks to offer.

Jodhpur
Bikaner
Railway.

No. 2459 of 1922, dated Junagad, the 29th May 1922.

Serial No. 41.

From—The Manager and Engineer-in-Chief, Junagad State Railway,

To—The Secretary, Railway Board, Simla.

With reference to your letter No. 505-T.-21, dated 1st April 1922, I beg to say that—

Junagad State
Railway.

- (1) In cases of Risk Notes B, H, C and A the burden of proof in case of loss and C, should, in my opinion, rest on the owner of the goods.
- (2) That the words "wilful misconduct" be substituted for "wilful neglect." I would also suggest adding the word "theft" after robbery in the latter portion of Risk Note B.

I enclose herewith the observations* of our Railway Pleader who has had 22 years' experience in Railway cases in Kathiawar, for your information.

* Serial No. 42.

Serial No. 42. *Copy of observations about Risk Note by K. K. Trivedi, Railway Pleader, Bhavnagar.*

The condition in India is quite different, India is a very vast country, and Through Booking System is so much developed that the consignments from the stations on the South Indian Railway to the stations on the North Western Railway, and from Howrah to the stations on the West Coast of India are being carried daily in a very large number. The consignments are often required to be transhipped from wagons of one gauge to another, from wagons of the same gauge to other wagons to release the foreign stock.

2. The consignors never put their marks on each and every bag or article of consignment of full wagon load and they use invariably second or third hand baggings. The traffic is so heavy that the Railway staff often entrust the work of marking the consignment to the labourers of the consignors, with the result that when the consignment is received at the destination, the consignor who is a purchaser by letter only, and having no knowledge as to the condition of the baggings, marks, etc., at the booking station, disowns the consignments if the market is dull or is going down, or the articles are found damaged, and knowing that the consignment is covered by Risk Note B yet unscrupulously drags all the Railways of the route to Court, there he denies the Risk Note B, the Railway staff shows him the Railway Receipt produced with the plaint by him in which are remarks "Risk Note B is held," the officer of the Court persuades that as there is already remark in the Railway Receipt produced by him with his plaint that the Risk Note B is held, his not admitting it, is not proper, but he persists in denying it. The Railway is put to great trouble in issuing a commission to a very distant country to prove the Risk Note and the consignor in collusion with the consignee evades the services of the Court to attend with an excuse that he has gone to other place, the commission is returned unexecuted. The Railway has to move the Court again to re-issue it. The result is the same and the Court passes decree holding that the Risk Note is not proved by the Railway, the Railway tries to secure the evidence of the witnesses who attested the Risk Note but these persons are often outside the town when commission goes for the reasons best known to them.

3. As the Risk Note is under revision, it is essentially necessary to frame any rule to protect the interest of the Railway against this mischief of the consignee. The circumstances are now much changed, everywhere English language is now common, the Through Booking Trade is much developed, the merchant in every corner of India is now sufficiently trained up in the Railway work, and it is now time to legislate a sound and reasonable rule to protect the interest of the Railway.

4. The consignor knows that he has passed a Risk Note, he received a Railway Receipt in which the remarks as to the risk note are made, he sends the receipt to the consignee who also knows that risk note is passed, the Railway knows that it carries the consignment under the terms of Risk Note B, it is then nothing but fraud on the part of the consignee to deny the risk note. If the Railway succeeds in proving the risk note by commission, the actual expenses incurred are so much that the Railway is at a great loss even if it is proved, as the Court does not award actual expenses to Railway.

5. It is now time to introduce the maxim in Courts that "consignor should take care to examine the conditions of receipt" to protect the interest of the Railway which is obliged to carry the consignment under Through System from one corner to the other in India.

6. The proposed rule for legislation is as under :—

"If the Railway Receipt bears the remarks that Risk Note is held, the onus of proof that the risk note is not held is upon him, who so alleges."

7. The receipt is delivered to the consignor immediately the goods are booked and the consignors are then in a position to know that the remarks are

right or wrong and they can then and there take action to correct it if wrongly passed.

8. It would not be equity and justice to order the Railway which then and there gives the Railway receipt to the consignor who accepts it without any objection, to prove the fact of risk note when *prima facie* the consignee produces Railway receipt with remarks that risk note is held.

9. I have heard judges passing remarks in open Court when consignee-plaintiff on being asked by the Court to admit risk note does not admit it, to the effect that—

“It is waste of time to issue commission for the proof of risk note when the consignor accepted the Railway receipt with remarks of risk note, and when the consignee-plaintiff produces risk note with the plaint without a word of protest in the plaint against the risk note, some rule is required to remedy this.”

10. If an opinion of the judges who have to try the original cases of Railway be taken, they will very strongly support this rule. They have realized in the cases before them how much injustice is done to the Railways by the consignee in not admitting the risk note when the receipt bears the remarks of risk note.

11. Besides the remarks as to the risk note in the receipt there is in the receipt one more way to find out whether Risk Note B is held, I mean the rates charged, which is the reduced one, and with the Tariff book it can be easily ascertained whether the rate is the reduced or not. Thus the consignee has before him two tests in case of Risk Note B but there is only one test in case of Risk Note A, C.

Misdespatch or Misconveyance.

12. The consignment by a *bonâ fide* mistake is often sent to a wrong station and there it remains for some time till it is connected. Up to now all the courts exempted the railway for misdespatch, misconveyance or over carriage under the terms and conditions of the Risk Note B by reason of the words:

“loss, destruction, deterioration of or damage to the said consignment from any cause whatever.”

Arunachela versus The Madras Railway, 33 Madras Indian Law Report, page 120.

Junnial versus The Bombay, Baroda and Central India Railway Company, 14 Allahabad Law Journal, page 396.

13. But recently the High Court of Bombay in the case of *Vall versus The Great Indian Peninsula Railway*, 24 Bombay Law Reporter, page 316, held that if damage occurs to the consignment if sent by other route the Railway is not exempted under the Risk Note B. With great respect to the Judges who passed the said judgment it is submitted that the words “loss, etc., from any cause whatever” are not taken into consideration in passing the judgment. The Subordinate Courts on the strength of this judgment now have already passed decrees in all cases in which the consignments are sent by mistake to another station and there remained for some time unconnected.

14. As the Through Traffic in India is developed much, and as there are various gauges, many junctions, and as the merchants get the benefit of the Through Traffic it is necessary to protect the interest of the Railway against *bonâ fide* mistake for misdespatch, misconveyance under Risk Note B.

Onus of proof.

14 (a). In cases on Railway risk the burden of proof that the loss, etc. was not due to the negligence or misconduct of the Railway servants is upon the railway, but in cases under Risk Note B, the burden of proof that the

Railway is liable under the exception of the Risk Note B, is upon the owner of the goods. This matter is judicially decided in the following cases :—

- (1) East Indian Railway Company *versus* Nathmal.
39 Allahabad Indian Law Report, page 418.
- (2) East Indian Railway Company *versus* Nilkanth Rai.
41 Calcutta Indian Law Report, page 576.
- (3) 14 Nagpur Law Report, page 122.
- (4) 28 Kathiawar Law Report, page 76.
- (5) Bombay, Baroda and Central India Railway *versus* Ranchhod.
21 Bombay Law Reporter, page 779.
- (6) 16 Calcutta Weekly Notes, page 766.
- (7) 22 Calcutta Weekly Notes, page 622.

15. Notwithstanding so many decisions the Bombay High Court recently held in a case of Ghelabhai *versus* East Indian Railway Company, 23 Bombay Law Reporter, page 525, that in case of loss of some packages under Risk Note B the railway should give evidence to show how the loss occurred. Following this decision now every Subordinate Court has decreed the claim under Risk Note B, holding that the Railway should give evidence about the loss even under the risk note which has been admitted by the plaintiff.

16. Thus it has become necessary on the face of this decision to legislate on this matter of proof and it is equity and justice to hold that under Risk Notes B, H, C, A and others the burden of proof in case of loss, etc., should be upon the owner of the goods. If this point is not brought before the Railway Board at this time, I fear that according to the above decision of the Bombay High Court every Court and particularly under it will always throw the onus upon the Railway and the Railway will be put to a great disadvantage, this is the proper time when this rule should be pressed and got legislated.

Wilful negligence.

17. The term "negligence" is indefinite and it has given rise to a number of unreasonable claims and Court cases, which is not the object under the Risk Note B. The words "wilful neglect" are so construed by the Courts in the unreported cases that even a *bona fide* mistake of a railway clerk is construed as wilful neglect holding that it includes doing of something which in the circumstances a reasonable and careful man would not do, or omission of something which in the circumstances a reasonable and careful man would do. Thus it will appear that the words "wilful neglect" are so construed by the Courts that even a *bona fide* mistake of a railway clerk is construed as wilful neglect. The consideration for the reduced rate under Risk Note B is thus made *null and void*. It is therefore submitted that the Conference will press this point for the consideration of the Railway Board and "Misconduct" should be substituted for "neglect or negligence."

Pilferage, misdelivery and non-delivery.

18. If the Railway Board on behalf of the merchants insist upon throwing liability for these matters, I request that the following proviso should be added to this clause :—

" Provided that the Railway shall not be liable for the said cases of non-delivery, pilferage or mis-delivery on proof that the same has not been caused by wilful misconduct on the part of the servants of the Railway "

this proviso does appear in the risk note in England where the Railway has accepted the liability about these matters therefore when these are adopted in India, the proviso should be also adopted with it. Another proviso should be that the acceptance of liability for these matters should be subject to the goods being properly protected by packing not easily removable by hand and to their being fully and properly addressed.

Owner's Risk Rate.

19. In England the reduction of Owner's Risk rate over the Railway Risk rate is only 10-15 or 20 per cent, while in India it is 34 per cent, it is therefore submitted that when a greater measure of responsibility in respect of goods carried at Owner's Risk is accepted, the rates should be increased. It should not be less than 20 per cent.

20. It would be to the interest of the Railway and the merchants to adopt one rule for the Owner's Risk rate instead of various rates approximate to the value of the risk involved in each case, it would give rise to many complications and mistakes in quoting the correct rates for the Risk Note B. The Railway has fixed the rates of the Railway Risk in each class of goods and for the purpose of the Owner's Risk rate, I submit that a fixed reduction in percentage should be made from the Railway Risk rate in all classes of goods. For example, if Rs. 100 are quoted for a consignment from a particular station to another station for Railway risk, 20 per cent less are the Owner's Risk rate that is Rs. 80. This rule should be made applicable to all the classes of goods, it would avoid unnecessary and faulty calculations for various goods, and the Railway has fixed the rates of the Railway Risk in consideration of the risk the railway has to bear in each class, therefore it would make the Tariff calculations very easy, and the merchants can verify the rates also very easily. At present the verifying of the rates of Owner's Risk is so much complicated on account of various issue of now and then changes in rates that in a Court of Law the rates cannot be tested without a competent rating railway clerk. Therefore the above proposal will meet satisfactory working in rating matters.

Theft.

21. Generally the Railways have taken all the precautions against thefts, but condition in India is quite different, there are certain class of people who make their livelihood by committing train thefts, the Government has placed at various places police posts and arranged travelling police with the trains, yet thefts are committed every day in running trains.

22. The merchants have their remedy against the offenders by applying the Government Police Department and tracing the offenders, and the carriers cannot be made liable for the thefts committed on the goods while in their possession. The master can not be held liable for the criminal acts of servants is the maxim that governs these cases if it be shown that the servants of the Railway should be presumed to have stolen the goods if the offenders cannot be found. This is misinterpretation of Law on the point. Lord Chelmsford in a case of misappropriation of money of Bank by a clerk of the said Bank held that—"It is clear according to authorities, that the Bank in this case was not bound to take more than ordinary care of the deposit entrusted to them." The suit was dismissed against the Bank, Russell Railway Act, 2nd Edition, page 182. In case of *Shaw versus Great Western Railway Company Q. B. Volume I, page 373*, it was held that loss of goods by theft of a Railway Company's servant was not a loss 'occasioned by the neglect or default of the Company servants' same book of Railway by Russell, page 182.

23. It is therefore necessary to add word "theft" after "robbery" in the last proviso in the Risk Note B in use at present.

24. When a greater measure of responsibility in respect of goods carried at Owner's Risk rates is being thrown upon the Railway, the Railway is entitled to ask the above protection.

Serial No. 43.

Letter No. 29-84-T-22—IV, dated Lahore, the 30th May 1922.

From—The Agent, North-Western Railway, Lahore,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

*Revision of Risk Note Forms.*North-Western
Railway,

I regret the delay which has taken place in answering your letter No. 505-T-21 of 15th-17th April 1922. This is due to my having considered it advisable to answer your letter after the Punjab Communications Board had held a meeting to discuss the questions raised in your above-quoted letter, so that I might be able to let the Railway Board know what my views were on any points which the Punjab Communications Board might raise.

I enclose a copy of the Traffic Manager's letter* No. 1175-03-Mc., dated 25th May 1922, with which he sent me a copy of the report† of the Sub-Committee of the Punjab Communications Board. Before commenting on the points raised by the Traffic Manager or the Punjab Communications Board's report I shall reply to the two particular points (mentioned in paragraph 4 of the Railway Board's letter) on which my views are asked :—

Onus of proof.—I agree with the Traffic Manager that the "onus of proof" should be thrown on the consignor and not on the Railway. This was agreed to by the majority of the Sub-Committee of the Punjab Communications Board. Rao Bahadur Chaudhri Lal Chand, O.B.E., however accorded a minority report on this point by suggesting that the onus should be thrown on the Railway in the first instance.

(ii) *Alteration, addition to or definition of the words "loss, destruction or deterioration."*—As regards loss I do not consider it necessary to in any way alter the present wording which, under the terms of the Risk Note, renders a Railway Administration liable for the loss of a complete consignment, or a complete package forming part of a consignment, if the consignor can prove that such loss is due to the wilful neglect of the Railway Administration, etc., etc. If it is intended that Railways should be made liable for pilferage from packages, i.e., loss in weight of one or more packages in consignment, then it will be necessary to define how such consignments should be packed, for the Railway cannot be held responsible for contents if loosely, badly or inadequately packed. It seems probable that the increase in cost of packing will be so great that generally speaking the merchants will prefer to take the risk as they do at present.

On the question of "destruction or deterioration" it might be possible to concede that a consignment should not take longer than one week, say, to travel 100 miles or part of a 100 miles. A conditional clause will have to be inserted however that this period is exclusive of delays due to accidents, restriction in movement of traffic, civil commotion, strikes, labour disputes, etc.

2. There are two points which the Punjab Communications Board Sub-Committee raise :—

(i) Definition of a "Running train" (paragraph 2 of their report).

(ii) Deletion of the words "and the Railway Administration accepts no responsibility for the correctness of the vernacular translations."

The definition of a Running train as is given in General Rules is "a train which has started under an authority to proceed and has not completed its journey." As no train can proceed without line clear, the word journey implies the distance to the next station, or in other words the "block section."

To apply such a definition to the words "Running train" as used in the Risk Note is obviously incorrect as it would mean that between the time a train arrived at a wayside station and the time the driver was given "Authority,

to proceed the train would not be considered a Running Train and the Railway would thus be liable for loss of a complete package or packages.

Should it be considered that such definition should be accepted, it will then be necessary to arrange for an increase to the watch and ward staff so as to provide protection at all roadside stations. Such charges would have to be met by an increase in Owner's Risk rates.

I however agree with the Traffic Manager that in cases where trains are delayed at stations for the purpose of changing engines and train examining in such cases the train should not be called a Running Train while an engine is not attached to it and not ready to proceed to the next Engine Changing Station.

As regards the Punjab Communications Board Sub-Committee's suggestion to delete a part of the note at the foot of the Risk Note, I agree with the Traffic Manager that the proposed deletion should not be made.

*Copy of letter from the Traffic Manager, North-Western Railway, to the Agent, Serial No. 44-
North Western Railway, Lahore, No. 1173-03-Mc., dated 25th May 1922.*

Risk Notes.

With reference to paragraph 4 (i) of the Railway Board's letter I am of opinion that the onus of proof should continue as at present to rest on the consignor.

As a general rule the provisions of the Risk Note are clearly understood by the Commercial community and the contract entered into is binding.

2. There have been however cases in which the consignor has legitimate grounds for complaining that the provisions of the Risk Note are such as to justify a revision. For instance a consignment booked from Karachi to Lahore, a distance of 755 miles is for one reason or another delayed and takes 3 or 4 months in transit as the result of mistakes made by the Railway staff. If on delivery of the said consignment it is found that damage has occurred as a result of the delay in transit, the consignor cannot, under the terms of his special contract, as they are at present, expect to receive any compensation for such damage.

On the other hand we have had many instances in which consignees have endeavoured owing to a fall in the market to recoup their legitimate trade losses by claiming from the Railway compensation on the grounds that there has been undue delay in transit.

3. Therefore any revision of the terms of the Risk Note favouring the insertion of a clause throwing liability on to the Railway for delay in transit would require to be very carefully drafted, particularly as to the time in transit considered normal. In this connection I would invite attention to the exceptions as to the Railway's liability that are made in the case of the English Risk Note. The exceptions read as follows:—

“ Nothing in this condition exempts the Company from any liability they might otherwise incur in the following cases of non-delivery, pilferage or mis-delivery, viz:—

- (i) Non-delivery of any package fully and properly addressed unless such non-delivery is due to accidents to trains or to fire.
- (ii) Pilferage from packages of goods protected otherwise than by paper or other packing readily removable by hand, provided the pilferage is pointed out to a servant of the company on or before delivery.
- (iii) Mis-delivery where goods fully and properly addressed are not tendered to the consignee within twenty-eight days of despatch.

4. I am of opinion that some such exceptions could with advantage be adopted in this country with modifications to suit the conditions of trade, methods of packing, addressing and despatch prevailing here. For instance, in

the third exception, the time limit in transit might be made two calendar months.

5. The term "running train" used on the Risk Note requires to be clearly defined. At present there are very divided opinions as to the exact meaning of the term. The term "running train" is defined in the General Rules for Indian Railways as a train which has started under an authority to proceed, and has not completed its journey. This definition if strictly acted up to would place Railways in an unfavourable position as regards claims for compensation on consignments booked under Risk Notes. For the purposes of the Risk Note therefore an amended definition is required and I would suggest for discussion this—"a running train is a train which is in complete readiness to start from one engine changing station until its arrival at the next engine changing station."

6. As regards paragraph 4 (ii) of the Railway Board's letter, it is not clear how any alteration in the wordings of the Risk Note Form can secure for the consignor a right to compensation as suggested. Under the terms of the Risk Note the Railway Administration is now liable if it be proved by the consignor that the loss of a complete consignment or a complete package forming part of a consignment is due to the wilful neglect of a Railway servant.

It has been suggested* by the Punjab Communications Board that there is a general desire among the trading community that the terms of the Risk Note should be extended in such a way as to include a Railway Administration's liability for losses in bulk or weight. I am of opinion that if such liability were thrown on the Railway Administration it would be unfair and would probably lead to the consideration of the question as to whether Railways could continue to quote alternative Owner's Risk rates in many instances, and may possibly result in a general increase in rates.

A recent decision in the High Court of Bombay rules that when a Railway Administration takes advantage under the conditions of Risk Note Form "B," it is incumbent on the said Administration to explain how the loss occurred. It appears to me that if this ruling were strictly acted up to by all Railway Administrations, there should be no cause for complaint on the part of the owner.

8. I am enclosing with this a copy of the proceedings of a Sub-Committee of the Punjab Communications Board on this subject. As regards paragraph 4 of the Committee's report, the foot-note reads as follows :—

"The above Form is for the convenience of the Public, translated into the vernacular on the reverse *but the Form in English is the authoritative form* and the Railway Administration accepts no responsibility for the correctness of the vernacular translation."

So long as English is the legal language in which the authoritative form is drawn up forming the special contract I think it would be dangerous for the Railway to admit being in any way bound by the translations into the vernacular which are idiomatic and may lead to misunderstandings.

Serial No. 45.

No. 350, dated the 29th May 1922.

From—G. W. Eves, Esq, B.A., B.A.I., M.I.C.E., Agent and Chief Engineer, Barsi Light Railway,

To—The Secretary, Railway Board, Simla.

Barsi Light
Railway.

With reference to your circular letter No. 503-T.-21 of 15th-17th April last regarding the revision of Railway Risk Notes, I forward herewith a copy of my Traffic Manager's views† on the subject for the information of the Committee.

Serial No. 46.

*Copy of Traffic Manager's letter No. R.B.C. 1 of 12th May 1922 to the Agent Serial No. 46.
and Chief Engineer, B. L. Railway.*

Your No. 141 of 21st March 1922 *re* revision of Risk Notes.

The decisions of civil courts on question of protection afforded by risk notes in general have hitherto been very inconsistent—chiefly owing to the ambiguous wordings. For instance—the words “Liable to damage, leakage or wastage in transit” in Risk Note Form “A” are rather vague and the staff always find it difficult to determine what is or is not bad packing and as a result risk notes are held where they are not required or not held where they are required. This point will therefore have to be cleared when the question of revising Form “A” is taken into consideration.

2. The term “wilful negligence” in Risk Note Form “B” is also indefinite and vague. Risk Notes can afford protection to the Railway only against risks incidental to Railway transit and not against independent wrongs or wilful acts of wrong doing, not contemplated in the risk, incidental to Railway transit. The term “wilful misconduct” means the doing of something or the omitting to do something, which it is wrong to do or omit and which the person answerable, does or omits intentionally knowing that his act or omission is likely to endanger the goods. It does not also seem right to expect Railways to be responsible for the misconduct or neglect of their servants or agents in every respect. The substitution of the word “misconduct” in place of the word “negligence” will therefore have the effect of reducing the number of unreasonable claims to some extent. In the eyes of the Law, it is a defence which will relieve the carrier of liability if the claimant cannot prove negligence on the carrier's part contributing to the damage. It is therefore quite desirable that the burden of proof should always lie on the plaintiff.

3. The Railway quotes alternative rates for certain descriptions of goods, a higher and a lower rate, in the interests of trade and its constituents and as such those taking advantage of the lower rate take it upon the conditions under which such lower rate is quoted. It is in the hands of a Judge to declare any contract as “unjust and unreasonable.” If therefore the money difference in the Railway Risk rate and Owner's Risk rate is unreasonable, the Judge is likely to hold that the trader did not get a fair option and practically was coerced into acceptance of the Owner's Risk rates and that the conditions and consequently the contract, was “unjust and unreasonable.” If the same reasoning is applied to the Railway, the difference must be reasonable from their point of view to render the contract “just and reasonable.” The difference in the Railway Risk rates and Owner's Risk rates is, at present, arbitrary and not in proportion to the risks involved. If therefore the Railways are required to accept greater responsibility in respect of goods carried at owner's risk, the traders on their side must be prepared to agree to an increase in many of the Owner's Risk rates.

4. In my opinion therefore —

- (a) The principle of throwing the onus of proof on the consignor does not require any modification.
- (b) The words “loss, destruction, deterioration, etc.” should be altered only so far as the substitution of the word “misconduct” for “negligence” is concerned.
- (c) That if the Railways are to be asked to accept a greater measure of responsibility in respect of goods carried at Owner's Risk rates—
 - (i) the whole question of Owner's Risk rates should be examined and the rates increased where necessary to make up the difference between Railway Risk rates and Owner's Risk rates approximate to the value of the risk involved in each case;
 - (ii) the acceptance of liability for pilferage or mis-delivery should be subject to goods being protected by packing not easily removeable by hand and to their being fully and properly addressed;
 - (iii) that in the conditions defining that responsibility the term “wilful misconduct” should be substituted for “wilful neglect”; and
 - (iv) they should be exempted from liability for both robbery and theft from a running train.

Serial No. 47.

Demi-official No. 730-T., dated Lucknow, the 1st June 1922.

From—The Agent, Oudh and Rohilkhand Railway,

To—The Secretary, Railway Department (Railway Board), Simla.

**Oudh and
Rohilkhand
Railway.**

With reference to Railway Board's letter No. 505-T.-21, dated 15th-17th April 1922, regarding the question of the revision of Railway Risk Notes, I beg to say that I am not in favour of any change in the existing forms of risk notes neither in regard to the question of onus of proof nor in regard to modifications in the wording for the purpose of adding to the responsibility of railways for loss or damage to goods. The forms were modified some years ago with the object of imposing a greater measure of responsibility on railways in connection with loss or damage to goods, and any further steps in this direction will render the risk notes valueless so far as protection to railways is concerned.

In regard to onus of proof I am not aware that the present form imposes undue hardship upon traders and the suggestion that railways repudiate liability for goods covered by risk notes by misrepresentation of facts is without foundation, at any rate on the railways on which I have been employed.

I consider, however, that traders have a legitimate grievance in the large difference which exists between owner's risk and railway risk rates which forces them to despatch their goods at owner's risk to do business at a profit. If the difference between the rates more nearly represented the risk involved I am of opinion that complaints against the risk notes would practically cease.

Serial No. 48.

No. 1092, dated Calcutta, the 30th May 1922.

From—Messrs. Mc LEAD & Co., Managing Agents, 28, Dalhousie Square,

To—The Secretary, Railway Department (Railway Board), Simla.

SUBJECT :—*Revision of Railway Risk Notes.*

Your letter dated 22nd May 1922, No. 505-T.-21.

**Messrs.
McLeod & Co.,
Managing
Agents
Burdwan,
Katwa, etc.
Railways.**

We are not in favour of modifying the terms of the existing Risk Note forms, which we consider are fair to both sides under the existing political conditions of the country.

But we do consider that it is the duty of Railways to reorganize their claims departments, to avoid the excessive delay in settlement of claims in connection with through traffic.

Serial No. 49.

No. F.L.-265, dated Calcutta, the 27th May 1922.

From—Messrs. MARTIN & Co., Managing Agents, 6 & 7, Clive Street,

To—The Secretary, Railway Department (Railway Board), Simla.

SUBJECT :—*Revision of Risk Notes.***Messrs. Martin
& Co.,
Managing
Agents Patwa
Islampur
Light
Railway.**

With reference to your letter No. 505-T.-21, dated the 22nd May 1922, we have the honour to forward herewith a copy of our (Bukhtiarpur-Bihar Light Railway) letter No. 2661, dated 10th May 1922, to the address of the Secretary, Government of Bihar and Orissa, Public Works Department, which expresses our views.

Copy of a letter from Messrs. Martin and Company, Managing Agents, to the Secretary to the Government of Bihar and Orissa, Public Works Department, Railway Branch, Ranchi, No. 2661, dated Calcutta, the 10th May 1922.

SUBJECT :—*Proposed revision of Risk Notes.*

With reference to your telegram dated the 8th instant, we have the honour to forward the following note as representing the views of this Administration :—

The history of the development of risk notes would indicate that the time is ripe for another change in their terms. Among railway users, however,

there seems no consensus of opinion as to what this change should be. The plea of the bazar trader that owner's risk rates must remain as they are, railway risk rates lowered and a general widening of the liability accepted by railway companies in terms of risk notes enforced, is effectively disposed of in paragraphs 12, 13 and 14 of the demi-official of the Secretary to Indian Railway Conference Association No. 3264-6, dated the 10th April 1922, and need not be further considered; it appears, however, that the more responsible seeds and soft goods merchants are more or less prepared to accept certain rise in risk rates in return for a relaxing of risk note conditions, whereas the dealer in bulky goods though desiring some amelioration in their condition are in no way ready to face the possibility of a rise in rates. They are fairly content with their present bargain. From different reasons the Railway view too appears to favour that things be left as they are. We do not consider, however, that the view which is against extended Railway liability because of the personnel of railway companies, the backward state of the country and the conditions in which goods are handled is correct. Since all these matters are in the hands of the companies themselves, as long as they have no incentive to improve conditions, the present admittedly unsatisfactory state of affairs will continue.

If risk note conditions were relaxed, railways would automatically have to improve the conditions in which goods are handled. During the transition period rates would have to be raised to cover the greater risk, but later these might be lowered when conditions had approximated more to those obtaining in more advanced countries. We are in favour of a loosening of the stringency of the risk note coupled with the moderate rise in owner's risk rates. Some basis for the percentage increase might be found from information supplied by merchants as to their losses under the present system correlated with the figures supplied by railways as to claim paid on different commodities.

As to the change to be effected in body of risk note (taking Risk Note B as the most important) the deletion of the clause limiting railways responsibility to the loss of a complete consignment or package is recommended. It is inequitable that a company's liability is satisfied where of 200 bags of flour, say, only the bags were delivered at destination. A ten per cent. margin in the matter of weighment might be permitted. In the concluding portion of the note, misconduct should be substituted for negligence though as a matter of practical politics, we doubt if the bracketing of both these terms in the risk note would make very much difference while traders would probably look on the retention of both words as a substantial concession. Negligence is a vague word and proof thereof must be very difficult to adduce, apart from the fact that in the terms of the Carriers' Act there may be a want of care such as a man of ordinary prudence might display towards his own goods, which amounting to negligence would not be penalised by the risk notes. The onus of proof must still lie with the merchant. In present conditions it is not feasible to make railways produce proof against their liability in certain accepted cases as at home, though it is an ideal to work towards. No reference appears necessary to fire, theft from running trains, etc. If traceable to misconduct liability is fixed. We would further recommend a revision of the regulations regarding packing and addressing and an insistence on the rules on these points already in force. Finally as it is not improbable that revision of the risk note will lead to an increase of litigation over claims, the committee of the Legislative Assembly would perform a useful service by defining misconduct and negligence and laying down certain test principles to assist in apportioning liability.

No. P-1897, dated Bombay, the 31st May 1922,

Serial No. 50.

From—The Secretary, Bombay Port Trust,

To—The Secretary, Railway Department (Railway Board), Simla.

SUBJECT :—*Proposed revision of Railway Risk Notes.*

With reference to your endorsement No. 505-T-21, dated 15th-17th April 1922, addressed to the Secretary to the Government of Bombay, Public Works Department, I am directed to say that the questions at issue are of a highly technical and controversial nature and cannot be satisfactorily dealt with in a reference of this nature.

Bombay Port Trust.

2. As regards the form of risk notes I am to say that as far as local traffic on the Bombay Port Trust Railway is concerned the system of combining the

risk note with the consignment note has been sanctioned by the Railway Board—*vide* their letter No. 825 T.-16 of 16th May 1917. This change of system which it is proposed to introduce next year, is very desirable as at present cases—frequently occur of consignors repudiating the signatures on risk notes. The only proof of identification which the railway has of the consignor as owner of the goods is the consignment note and it appears that under the revised system such cases could not occur and this will end the disputes as to whether consignments were booked at owner's risk or not. Owner's risk consignment notes can be printed on different coloured paper to prevent mistakes.

3. As regards the construction of risk notes generally, it is obviously desirable that the conditions should be so clearly stated as to leave no loop-hole for repudiation or litigation.

4. With reference to the two points specially referred for consideration, I am to say that in the opinion of this administration :

- (1) the condition of Risk Note ' B ' should absolve the Railway absolutely from all liability ;
- (2) no alteration, addition or definition such as proposed is necessary as the right of the consignor to compensation under the circumstances referred to is already clearly expressed.

Serial No. 51.

No. T.-821, dated Calcutta, the 1st June 1922.

From—The Agent, East Indian Railway Company,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

East Indian
Railway.

I beg to acknowledge the receipt of your letter No. 505-T.-21, dated 17th April 1922, advising me of the appointment of a Committee to consider the question of revision of Railway Risk Notes. In your letter you ask my opinion on the form, construction and application in practice of the Risk Notes in use at present and state that, while it is the intention of the Committee to review all the existing forms of Risk Notes, my reply should give special consideration to the following points :—

- (i) Whether the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration for carriage requires modification. (This refers specially to the terms of Risk Note forms " B " and " H.")
- (ii) Whether the words loss, destruction or deterioration used in the Risk Note forms should be altered or added to or defined in such a manner as to secure for the consignor the right to compensation (for the loss of the whole or part of a consignment) for the above, arising from the wilful neglect or criminal acts of the servants of the Railway Administration.

2. As regards the general question of onus the terms of the reference are not entirely free from ambiguity. When goods are booked at Railway Risk, the liability of the Railway is that of a bailee, and in the event of loss, damage or deterioration, the onus of proving that the loss, etc., did *not* occur through the failure of the Railway to fulfil its obligations as a bailee lies on the Railway Administration. On the other hand, when the sender elects to book his goods at a lower alternative owner's risk rate, the Railway Administration, in consideration of the concession in rate, is relieved from its liability as a bailee, and can only be held responsible for loss, damage, etc., when the owner establishes wilful negligence or proves that the loss, damage, etc., occurred through the criminal misconduct of the servants or agents of the Railway. This transfer of the onus is an essential condition of the voluntary contract made by the sender, and has been held to be perfectly good in law. I consider that, provided the consideration offered by the Railway is reasonable, the arrangement is good in equity.

3. In suits for loss, damage, etc., of consignments booked at Railway Risk, we are required to prove that we have not been guilty of negligence and have taken as much care of goods entrusted to us for carriage as an ordinary man of prudence would take of his own goods of the same value. Logically we could resist every claim in which negligence did not occur, provided we could prove the due measure of care and the absence of neglect. A man of prudence could hardly do more than lock up his goods. Yet we have to pay claims in cases of thefts from locked wagons, merely because proof is wanting or, rather, is not sufficiently convincing for Law Courts, where it is at once assumed that the loss is due to negligence or theft by railway subordinates or with the connivance of Railway subordinates. This may be right in law, the onus of proof being on us. How impossible it is for a Railway to disprove the causes ascribed for losses is illustrated by the amounts paid by Indian Railways on account of claims.

4. The difference between disproving neglect and wilful neglect is so slight as to be almost negligible, and, if the onus of proof in the case of Risk Notes B and H were placed on Railways, it would mean in effect that, apart from the specified relief from the consequences of fire, robbery from a running train or any unforeseen event or accident, debatable liability in any case, our responsibility to the consignors would be precisely the same as for goods booked at Railway Risk. The consignor as a result, would get the benefit of the lower rate with practically no additional risks.

5. The actual consideration offered is a matter of fact and varies with different classes of goods carried under varying conditions, but so long as the difference in the rates for carriage at Railway and Owner's Risk is equal or exceeds the estimated value of the risk, the option is obviously reasonable and fair. Any difference in charge attributable solely to the transfer of liability, which exceeds the value of the risk, is a gratuitous concession to the owner and this, as will be shown later, has been established in English Railway Law.

6. As the issue has been raised in general terms and without reference to specific cases, it can only be dealt with in a general way. For the purposes of this discussion, rates for the carriage of goods may be divided into two main groups, viz:—

(i) Class rates.

(ii) Other than class rates.

As the issues involved are different, I propose discussing the considerations affecting the two groups separately.

7. Dealing first with class rates, for purposes of fixing the Maximum charge which may be levied for conveyance, goods are classified into a number of groups, for each of which a Maximum charge is prescribed. I need not discuss here the factors which determine the classification of any particular commodity. It will suffice if I point out that for certain commodities an alternative classification is provided. In some cases this classification varies exclusively with the risk or the conditions affecting the risk. In others, the difference is attributable to other factors besides risk. The following examples will illustrate my point:—

	R. R.	O. R.
Agricultural Implements packed	1	...
Agricultural Implements unpacked	3	1
Ale and Beer	4	2
Aluminium	6	4
Aloe Fibre unpressed	3	...
Aloe Fibre W.-200 L.	...	1
Bamboos	3	...
Bamboos W.-300 L.	...	1

Numerous other cases could be cited, but these will serve to make the point clear. In the case of Agricultural Implements, it will be noted that there are two Railway Risk rates, viz:—3rd class and 1st class—the difference being for the packing or absence of packing. As the lowest class is quoted at Railway

Risk for the "packed" there is no alternative Owner's Risk classification. For the unpacked an alternative Owner's Risk class is quoted.

In the case of Ale and Beer and Aluminium, the difference in classification is attributable solely to the Risk, while the case of Fibre and Bamboos, although Risk is one of the factors influencing the lower class rate there are other conditions attaching to the lower rates, *viz.* :—

- (1) That the goods are despatched in wagon loads.
- (2) That the goods are loaded and unloaded by the owner.

8. In many cases, the difference between Railway and Owner's Risk rates is more attributable to the incidence of other conditions than to the degree of liability.

9. In respect to those commodities ordinarily carried at the class rates, that is, for which no Schedule or station to station rates are quoted, an alternative rate can only be offered by quoting a lower class. The effect of this rigid system is that the difference in the actual charges for Railway and Owner's Risk must correspond to the difference between the maximum rates for the two classes. As a number of commodities, differing widely as to the risks involved in their conveyance, may be included in the same classes, it is impossible that the uniform difference should in all cases accurately represent the value of the risk. It may be claimed, however, that this generally results in a larger difference being maintained than the circumstances warrant.

10. In regard to "other than class rates," the general position is that, to meet the special requirements of particular descriptions of traffic, rates lower than the class rates are quoted, subject to certain conditions. Risk is usually one of these, but it is not the only factor nor even the predominating factor. The level of the lower rate may be influenced by considerations of competition, volume, regularity of movement and special factors affecting cost, such as securing loads for return empties and a large number of other reasons.

11. In regard to the general question of difference, it has been advanced that, where the difference is excessive, the merchant is forced, in competition with rival traders, to accept the lower rates, with its attendant risks, and he has, therefore, no real option. The same argument has been put forward in England, as evidenced by a well known case, *Brown versus Manchester, Sheffield and Lincolnshire Railway*. This case was brought against the railway by a Grimsby fish merchant for loss of market owing to delay, although he had been sending the fish to Billingsgate at a specially reduced owner's risk rate. He had during the period of his contract with the railway, saved some £20 in freight, but the contention put forward was that he could not compete with his rivals in the trade if he did not book at the owner's risk rate and hence there was no effective alternative offered to him to book at the Company's risk rate. The case was finally decided in the House of Lords, and in his judgment Lord Bramwell said :—

"It is absurd to say that there was no real option because the difference between the two rates was too wide and competition forced the plaintiff to make the agreement he did. That is to say that there is no option because the terms are too good, the benefit given to the plaintiff is too great; that if a less benefit were given to him and to all the other senders of fish—if instead of 20 per cent. being taken off the price it were 10 or peradventure 5 (for 10 might be too much for aught I know) then, indeed, there would be an option but as it is such an irresistible temptation to him, I suppose, it is so good a thing for him that he had no choice but to take it. The argument comes to this: the allowance is so just and reasonable to all fish dealers that it is unjust and unreasonable to each of them. This is a most extraordinary proposition. The assumption that he is obliged to do it, because he cannot otherwise compete with his fellow fishmongers is the most gratuitous one that was ever invented in this world. He says that he has put £20 into his pocket, and because he had done so, that we are to infer that he cannot carry on his trade unless he put that £20 in his pocket, and, therefore, that the thing is of a compulsory nature and that he has no option, no choice, and that consequently his agreement is not voluntary. I really do not understand how such a conclusion could be arrived at, except by some generous feeling that Railway Companies ought to be kept in order for the benefit of fishmongers."

12. In English Courts it has repeatedly been held that the fact that traders invariably adopt the lower rate is no evidence that the higher rate is unreasonable—

Foreman *vs.* G. W. Rly. 38 Lt. 851.

Gallagher *vs.* G. W. Rly., I. R., 8 C. L. 326.

G. W. Rly. *vs.* McCartey, 2 Aprc. 218.

13. Indian Railways, however, realising the difficulties which have arisen under the present system, have for sometime been considering a revision and a scheme is now under examination to prescribe a definite value to the risks involved. Under the present system a merchant may desire to take advantage of the lower rates offered in consideration of his compliance with all the conditions prescribed by the Railway, except that of risk, but as at present no separate value is attached to this factor of risk, the condition cannot be excluded from the bargain and he is bound to accept or reject it with the others. Under the system which has been proposed, there will be a separate "risk" classification, that is the commodities entered in the general classification will be sub-divided into groups according to the nature and extent of the risk involved and a definite "Risk" value will be attached to each group. This will make it possible for the sender to get the benefit of all lower rates without being forced to assume the liability and the onus of proving negligence which goes with it.

14. I will now deal with the question whether the words, loss, destruction or deterioration used in the risk notes should be altered, or added to, or defined in such a manner as to secure for the consignor the right to compensation (for the loss of the whole or part of the consignment) for the above, arising from the wilful neglect or criminal acts of the servants of the Railway Administration. I have already explained that if, in respect of consignments booked at Owner's Risk, the onus of proof is placed on Railways, the effect would practically be that the liability of the Railway would be much the same as for goods booked at Railway Risk. That is, the Railway would receive no consideration in return for the concession in freight allowed. This would obviously be unreasonable. There is no objection to the term "wilful negligence" being substituted by the item "wilful misconduct" but I do not think that the wording of the Risk Notes should be altered in any way such as would have the effect of putting the onus of proof on the Railway or increasing the liability of the Railway except to the extent indicated in the next paragraph.

15. I have not been able to ascertain why liability has been limited to a complete consignment or package, and I am of the opinion that this limitation is not justifiable. I would, therefore, suggest that, subject to the other conditions of the Risk Notes being unaltered, we should agree to include loss from packages by pilferage or abstraction due to the wilful misconduct of Railway servants, the onus of proof with regard to this also being on the consignor. In making this suggestion I have in mind the fact that loss by pilferage or abstraction is at times as great as loss by theft of a complete package. I have no wish to limit unreasonably the option offered by our Risk Notes, but consider also that in return, Railways should be exempted from liability for both robberies and theft from a running train.

No. T.-XIV-10-16, dated Bombay, the 31st May 1922.

Serial No. 52.

From—The Agent, Great Indian Peninsula Railway Company,

To—The Secretary, Railway Department (Railway Board).

Revision of Owner's Risk Note.

With reference to Railway Board's circular letter No. 505-T.-21, dated 17th April 1922, I beg to offer the following remarks:—

Great Indian
Peninsula
Railway.

Nominally the "onus probandi" lies on the plaintiff, but at the present time, this is, practically, a legal fiction, because railways are required by the Courts to give the plaintiff every assistance to prove negligence. A merchant

may come to Court and require the railway to produce books, documents and witnesses at great trouble and expense, and, practically, to conduct his case for him. If the intention of the Risk Note, as railways understand it, and as the Courts have interpreted it in the past, is to be made clear, the phrasing should be corrected by substituting "upon proof of wilful misconduct" for "due to wilful neglect." A phrase should also be inserted to the effect that the railway is only bound to show the bare fact of the loss, and not all the circumstances of the loss.

2. The words "loss, destruction or deterioration" should not be altered or added to or defined in such a manner as to secure for the consignor the right to compensation (for the loss of the whole or part of the consignment) for the above arising from the wilful neglect or criminal acts of the servants of the Railway Administration. The intention is not very clear but it appears to be to make railways responsible for partial loss, etc., due to wilful neglect, as well as for the loss of a complete package or consignment. This should be resisted as it would cause Railways to be involved in innumerable law-suits and to incur largely increased expenditure both in claims compensation and in legal defence. The burden of proof is practically at the present time laid upon railways to show that they are not wilfully negligent in the case of a complete loss, etc., and if this liability were extended to cases of partial loss, etc., our responsibility would be increased enormously.

3. The very large number of running train robberies have probably been the principal cause of the prevailing dissatisfaction of the Trade with the present form of Risk Note. We have made strenuous efforts to prevent them by special police precautions, punishing the staff and locking wagons; we are also trying patent wagon fasteners and are re-organizing our watch and ward. The word "robbery" implies the employment, or the threat of force, but it is often very difficult to prove the threat of force although it is known to be there. The word "theft" should therefore be substituted for "robbery."

4. Although not admitting that the maxima of the class rates are *prima facie* unreasonable, railways are engaged in getting out figures with a view to preparing Railway Risk rates the difference between which and the Owner's Risk rates will be more in accordance with the wishes of the Trade.

5. Some merchants appear to think that railways do not take as much care of goods booked at Owner's Risk as of those booked at Railway Risk. This administration does not think that such is the case on any railway. On this railway we take equal care of all goods.

6. It is contended that Indian risk notes should not be more favourable to the railways than English risk notes. It must, however, be remembered that the conditions in the two countries are very different.

7. Another complaint made by merchants is that a railway when forming part of a through route and charging Railway Risk rates for a consignment, claims protection under a risk note taken in consideration of Owner's Risk rates charged by a railway over another part of the route. It has not been the policy of this railway to claim protection when we have charged Railway Risk rates.

8. We find that merchants frequently deny the risk note, knowing well that it has been signed on their behalf and that they have, in consequence, received the benefit of the alternative rate. There are many difficulties in proving a risk note at some small station at the other side of India and we often fail to do so and lose our cases. A phrase should be inserted in the risk note to the effect that if the railway receipt bears the remark that a risk note is held, the onus of proof that the risk note is not held or is not valid lies upon the plaintiff.

9. The alterations suggested in the risk notes are briefly as follows:—

- (1) "Upon proof of wilful misconduct" should be substituted for "due to wilful neglect."
- (2) A phrase should be inserted to the effect that the railway is only bound to show the bare fact of the loss, and not all the circumstances thereof.

(3) "Theft" should be substituted for "Robbery."

(4) A phrase should be inserted to the effect that if the railway receipt bears the remark that a risk note is held, the onus of proof that the risk note is not held or is not valid lies on the plaintiff.

10. Any alteration of the Risk Notes that tends to an exact definition of the responsibility involved will be welcomed, even if it be in favour of the plaintiff. It is of primary importance that the risk notes be freed from all ambiguity, because uncertainty of interpretation leads to litigation and wasteful expenditure; also clearly defined responsibility is capable of being met by fair adjustment of rates.

11. I would in conclusion remark that any increase in the responsibility of railways must inevitably result in a proportionate increase in rates.

No. R. C.-38-9, dated Morvi, the 2nd June 1922.

Serial No. 53.

From—The Manager and Resident Engineer, Morvi Railway,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla,

Your No. 505-T-21, dated 15th-17th April 1922.

With reference to your above. I beg to remark that I am not at all in favour of any modification or change as asked for in clauses (i) and (ii) of paragraph 4 of Railway Board's letter No. 505-T-21 of 15th April 1922. On the other hand I would suggest to make some provision so that the onus of proving how and where the loss occurred may not be thrown on the Railway as was decided in 23 Bombay Law Reporter, page 525. Morvi
Railway.

It also seems to me absolutely necessary that a provision should be made against a revised ruling of the High Court of Bombay where mis-despatch is held to make Railway liable in cases of Risk note B (*vide* 24 Bombay Law Reporter, page 316).

Dated Kurseong, the 4th June 1922.

Serial No. 54.

From—The Consulting Engineer, Darjeeling-Himalayan Railway and other Branch Railway,

To—The Secretary to the "Owner's Risk Note Committee," Simla.

I venture earnestly and respectfully to draw the attention of the Committee enquiring into the question of "Railway Risk notes," to the attached copy of evidence* given by me to the Acworth Railway Enquiry Committee. It is a subject on which I feel strongly as the result of nearly 50 years' work on Indian Railways, in the welfare of which and of the Railway staff I take the deepest interest.

Mr. F. Bagley,
Consulting
Engineer,
Darjeeling-
Himalayan
Railway.

* Serial No. 55.

The public interests are also seriously involved as proved by the appointment of the Committee. The Report of the Railway Police Committee proved an appalling amount of loss to the public from robbery and pilferage, and damage from delays and negligence on the part of the Railways, which shirk their responsibilities on the "owner's risk" plea, and the traders acquiesce as they get cheap carriage, and hand on the losses to the consumer. The making of the Railways responsible for all losses is the only possible cure. It will mean of course a higher rate for every thing, but this will enable the Railways to make proper arrangements for watch and ward and detection and the protection of goods from damage by weather, and will be repaid tenfold to the public, including the traders. Above all, in my view, it will cause a stoppage of the serious temptations put in the way of the Railway staff which is being lamentably demoralised by the facilities for stealing with impunity from "owner's risk" goods, which is, as all know and the Police enquiry shows, turning every railway station (especially junctions and tranship stations) into a den of thieves. It is not right or just to put this temptation into the way of

not too liberally paid employees, and those who do it incur a very serious moral responsibility in thus encouraging dishonesty. Much nonsense is talked about the staff not knowing whether consignments are booked at owner's risk or not, the classes of goods generally booked at owner's risk are known to all, and for most of the articles specially open to theft, *there is no choice, as they are not booked except at owner's risk.*

I must admit that I have been trying for many years to push this view,— that the abolition of the owner's risk note is the only cure for the accursed thing, without any success or support from any body, but as explained above, I believe it is due to the facts not being realised by the public which is the real sufferer. The Railways fear the great increase in working expenses which would undoubtedly be involved, and are also apprehensive of a flood of false claims (it is not quite clear why, as those who mean to send up false claims do not book at owner's risk), and above all of the great effort and worry and hard work that will be needed to provide an efficient watch and ward and detective organisation. The traders as stated above get cheap carriage and pass on the losses to the consumer, who knows nothing about it.

No alteration in wording of the risk notes can have any real effect, for if the responsibility of the Railways is to be enlarged to any appreciable extent it ought to mean to them really the same measures for self-protection that would be required if abolition were decided on, but this fact will not be so obvious and their efforts will be half-hearted and ineffective compared with those that must be adopted if full responsibility is accepted.

If, after all, the idea hitherto accepted should prevail, that the combined opinion of the consignors and of the Railway Administrations must decide the question as the former agree to the conditions laid down by the latter under a system of free choice, it should at least be laid down that the free choice should extend to *all* articles which the Railways receive for carriage, and that those most open to robbery and pilferage (see the Railway Police Enquiry Report), should not be specially exempted, and booking at owner's risk remain compulsory, as it is now.

I write in the hope that these facts will be acknowledged by the Committee if they make a searching enquiry into the facts of a very great and growing scandal.

Serial No. 55. *Extract from evidence given before the Acworth Committee by Mr. F. Bagley (Retired) Chief Engineer, Railways.*

Recommendations that may seem germane to the enquiry.

This is so comprehensive a demand for suggestions that I venture to put forward some recommendations as to details of working which my long experience has impressed on me as essential to more successful Railway management, and in the public interest.

The first of these is the abolition of the pernicious system of booking certain goods "*at owner's risk*" at a lower rate for freight than charged for goods booked at Railway risks. In practice this system is a terrible evil, encouraging thefts and robberies and causing immense losses to consignors or consignees *paid for by consumers.* It is ordinarily urged in defence of the practice that "*consignors have their choice,*" and that the fact of enormous quantities of goods being sent under these conditions proves that on the whole it must be in the traders' interests to adopt it.

Such reasoning however plausible is entirely fallacious. *There is no choice for many kinds of goods,* especially those most exposed to dishonest practices. Coal and oil, fresh fruits, etc., are not booked except at owner's risk, and the railway staff are learning that thefts from such consignments may be committed with impunity. It is the demoralising effect of such a state of things that is to me the chief and crying evil, as *it is turning every railway station into a den of thieves.* As for the losses to traders, they are considered part of the charges necessarily incurred and passed on to the consumer, and it is the public that suffers. There is no remedy but doing away entirely with the

accursed thing. It will mean an indirect raising of rates, and the extra receipts will much more than pay for the greater cost of the enlarged watch and ward and detective staff which will be needed to check thefts and robberies. This improvement in policing, if taken full advantage of, will have an important effect in stopping other irregularities and dishonest practices in connection with goods sent at railway risk (for losses on which large sums are paid yearly), travelling without tickets, extorting bribes for use of trucks, etc., etc.

No. $\frac{626}{O}$ of 1922, dated Bhuj, the 2nd-5th June 1922.

Serial No. 56.

From—The Manager and Engineer-in-Chief, Cutch State Railway,

To—The Secretary, Railway Board, Simla.

In reference to your letter No. 505-T.-21 of the 22nd ultimo, I have the honour to inform you that the present form and wording of the risk notes should stand and not be altered, as the railway staff have to go principally on the consignee's word as to the contents of packages.

Cutch State
Railway.

No. 345, dated Secunderabad (Deccan), the 14th June 1922.

Serial No. 57.

From—The Agent and Chief Engineer, H. E. H. the Nizam's Guaranteed State Railways Company, Limited,

To—The Secretary, Railway Board, Simla.

Revision of Railway Risk Notes.

I beg to refer to your letter No. 505-T.-21 of $\frac{1}{17}$ th April 1922 and to state that with reference to the two points on which my special consideration was invited, my opinion is :—

Nizam's Rail-
ways.

- (a) that the burden of proof should remain with the claimant. Under English Law, the burden of proof lies with the plaintiffs and not with the defendants, and the principle should not be altered in this country ;
- (b) that if the loss occurs either due to wilful neglect of the Railway Administration or theft by or wilful neglect of its servants, compensation should be paid whatever part of a consignment is lost or damaged, but that in place of the words " wilful neglect " the words " wilful misconduct " should be used, to bring the Risk Note conditions in line with those of the English Risk Note Form which is accepted as a fair one. Further I consider that " theft " not " robbery " from a running train should be one of the conditions exempting Railways from liability.

Letter No. $\frac{2228}{S128}$, dated Bhavnagar Para, the 17th June 1922.

Serial No. 58.

From—The Manager and Engineer-in-Chief, Bhavnagar State Railway,

To—The Secretary, Railway Board, Simla.

With reference to Railway Board's letter No. 505-T.-21, dated 22nd May 1922, in connection with revision of Risk Notes, I beg to enclose herewith copies of letters* received from our Traffic Superintendent and Railway Pleader on the subject. I regret the delay in replying to Board's letter which is unavoidable.

Bhavnagar
State Railway.

*Serial No. 59.

2. I agree with the Traffic Superintendent that while safe-guarding the interests of the public, those of the carriers must not be overlooked, and if Railways are to be asked to accept a greater measure of responsibility in respect of goods carried at Owners' Risk rates, the whole question will have to be

carefully examined from all points of view peculiar to India and its vast Railway system.

3. The existing method of calculating Owners' Risk rates at two classes, or in some cases one class below the Railway Risk rates, appears to be arbitrary and anything but satisfactory. If it is admitted that the Railway Risk classification is a reasonable one, it seems possible to arrive at a reasonable reduction in the case of the consignor accepting the risk of carriage. In England the reduction made is 10, 15 or 20 per cent. according to the estimated value of the risk, and a reduction of 34 per cent. as is made in India appears to be unnecessarily generous. It has to be remembered that Railways are being asked to accept greater responsibility in respect of goods carried at owners' risk, and it is therefore not unreasonable that consignors on the other hand should also be asked to bear their share of the burden by accepting an increase in Owners' Risk rates.

4. It has been suggested by the Traffic Superintendent of this Railway that instead of a separate rate for goods carried at owners' risk being quoted for each commodity, a general reduction of 20 per cent. on the Railway Risk rate be made applicable to goods booked at owners' risk, this lump sum being divided between the Railways concerned in mileage proportions. The proposal is certainly a sensible way of adjusting the difference of charge between Railway Risk rate and Owners' Risk rate, but Audit and Traffic experts must say if it is a feasible proposition.

5. As regards the points (I) and (II) referred to in Railway Board's letter which call for special consideration, I would remark as follows:—

(I) "Whether the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to the Railway administration for carriage requires modification. (This refers specially to the terms of Risk Note Forms B and H.)"

6. In the case of Railway risk, the burden of proof that the loss, etc., was not due to the negligence or misconduct of the Railway servants rests with the Railway, but in cases under Risk Note B the burden of proof that the Railway is liable,—except where Risk Note B provides otherwise—the onus rests with the owner of the goods. In this connection I would like to draw attention to the legal side of the question and to quote certain judicial cases cited in paragraph 14 of the Railway Pleader's note,*

*Serial No. 41.

all of which are judicial decisions in case tried in a Court of law as regards onus of proof. But in spite of this, it will be seen from paragraph 15 of the Railway Pleader's note that the Bombay High Court recently held in a case of *Ghelabhai versus East Indian Railway Company*, 23 Bombay Law Reporter, page 525, that in the case of loss of some packages under Risk note B the Railway should give evidence to show how the loss occurred, and as the Pleader points out, following this decision every subordinate Court has decreed the claim under Risk Note B holding that the Railway should give evidence concerning the loss even under the risk note which has been admitted by the Plaintiff.

7. From the above it is evident that the tendency so far as the Law Courts are concerned is that the burden of proof lies with the Railway, and unless this question of burden of proof is made perfectly clear by an Act of legislation, the decision referred to above of the Bombay High Court which is bound to be followed by other Courts as well as Courts subordinate to it, will throw the onus of proof upon the Railway in all similar cases that come up for hearing.

8. The form of risk note as it stands does not make it perfectly clear where the burden of proof lies, and the legal opinions given together with the case cited above, show pretty clearly that the wording of the form does not set this at rest so far as the carrier is concerned. It appears therefore there is nothing for it but legislation.

9. II. "Whether the words loss, destruction, or deterioration, used in the risk forms should be altered or added to or defined in such a manner as to secure for the consignor the right to compensation (for the loss of the whole or part of the consignment) for the above arising from the wilful neglect or the criminal acts of the servants of the Railway administration."

10. The inclusion of the word "neglect," has given rise to a number of unreasonable claims and Court cases which is not the intention under Risk Note B. In the English form the words used are "wilful misconduct." The word "neglect" is not a suitable word to use and is so construed by the Courts that even a *bona fide* mistake of a Railway servant is magnified into "wilful neglect," and in this sense the Railway must be protected. It would be seen therefore that "misconduct" would be a better word to use in place of "wilful neglect," or negligence, the meaning of which can be distorted and so construed in a Court of Law as to throw the responsibility of the burden of proof on to the Railway. This is all I think that needs modification.

11. To sum up, if Railways are to be asked to accept a greater measure of responsibility in respect of goods carried at Owners' Risk rates they are entitled to ask—

(1) That the whole question of Owners' Risk rates should be examined with a view to these rates being enhanced where necessary to make the difference between Railway Risk rates and Owners' Risk rates approximate to the value of the risk involved in each case. The 20 per cent. all round difference recommended in paragraph 4 is a matter for consideration as to whether it is feasible.

(2) 12. "That the acceptance of liability for pilferage or misdelivery shall be subject to goods being protected by packing not easily removable by hand, and to their being fully and properly addressed." The carrier cannot be expected to accept liability for omissions or neglect on the part of the consignor. As regards pilferage, misdelivery, and non-delivery, if the merchants insist on throwing liability on to the Railway the following proviso should be added to this clause:—

"Provided that the Railway shall not be liable for the said cases of non-delivery, pilferage or misdelivery on proof that the same has not been caused by wilful misconduct on the part of the servants of the Railways." This proviso does appear in the risk note in England where the Railway has accepted liability under pilferage, misdelivery, and non-delivery wording of the risk note.

(3) 13. That in the conditions defining responsibility the term "wilful misconduct" shall be substituted for "wilful neglect."

(4) 14. That they shall be exempted from liability for both robbery and theft from a running train.

15. Thefts from running trains in India are of common occurrence. It is well known there are people who make it a means of livelihood to the extent that there are organized gangs employed in this kind of work who board heavy goods trains where owing to a heavy grade the speed is reduced to 5 or 6 miles an hour which makes it possible to carry out their depredations. Railways take all reasonable precautions against thefts, and in this matter of thefts by organized gangs the conditions in India are absolutely different as compared with England, and it is in India that Railways need special protection. I would for this reason urge that in Risk Note B in use at present the word "theft" after "robbery" be added.

16. Finally, in considering the general question of Risk notes, special consideration should be given to the special conditions obtaining in India in connection with the transport of goods by rail when fixing the extent of their responsibility. Comparisons with English practice where the conditions are entirely different, cannot be taken as a criterion, as it would not be fair to do so.

Serial No. 59.

No. C. 211-22-23, dated Bhavnagar Para, the 9th June 1922.

From—The Traffic Superintendent, Bhavnagar State Railway,

To—The Manager and Engineer-in-Chief, Bhavnagar State Railway, Bhavnagar Para.

Revision of Railway Risk Notes.

Traffic Superin-
tendent,
Bhavnagar
State Railway.
*Serial No. 42.

I have the honour to enclose a copy of our Railway Pleader's observations* in connection with Risk Notes "B" about which a commission is now taking evidence.

I agree with him that in safeguarding the interest of the public, those of the carriers should not be overlooked and I would advocate that instead of a separate rate for goods carried at Owner's risk being quoted for each commodity, a general reduction of 20 per cent. on the Railway Risk rate be made applicable to goods booked at Owner's risk, this lump sum being divided amongst Railways concerned in mileage proportion.

Serial No. 60.

No. 4031, dated Dholpur, the 21st-22nd June 1922.

From—The Manager, Dholpur-Bari Railway,

To—The Secretary, Railway Board, Simla.

SUBJECT :—Regarding revision of Railway Risk Notes.

Dholpur-Bari
Railway.

Referring to your letter No. 505-T.-21, dated 17th April 1922, and a subsequent reminder, I beg to inform you that I have no remarks to make on the subject.

Serial No. 61.

Letter No. $\frac{29-32}{23}$, dated 27th June 1922.

From—G. ANSON BAYLEY, Esq., Agent, Assam-Bengal Railway, Chittagong,

To—The Secretary, Railway Board, Simla.

*Risk Notes.**Railway Board's letter No. 505-T.-21 of 17th April 1922.*

Assam-Bengal
Railway.

In the above letter the Railway Board ask my views regarding :—

- (i) Whether the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration for carriage requires modification. (This refers specially to the terms of Risk Note forms 'B' and 'H'.)

My opinion is that no modification should be made.

Also in reference to :—

- (ii) Whether the words loss, destruction or deterioration used in the Risk Note forms should be altered or added to or defined in such a manner as to secure for the consignor the right to compensation (for the loss of the whole or part of the consignment) for the above arising from the wilful neglect or criminal acts of the servants of the Railway Administration.

In my opinion no alteration on this point also should be made in the Risk Note. I should say, however, that in cases where Railways feel that as an act of grace, and not as a right, compensation can be given that they should do so.

I do not hold that Railways should always take advantage of the full legal protection afforded by the Risk Note though the full legal protection, as at present afforded, is clearly necessary as a general thing. I think it is the attitude of certain Railways in refusing all claims merely because the Risk Note gives protection that has caused a general complaint.

2. If any modification is to be made in the Risk Note with a view to giving a greater measure of responsibility to Railways, then it must obviously follow that the Railways must consider the enhancement of Owner's Risk rates to meet the special conditions met with in carrying commodities. The demand appears to be for Railways to take all the risk, almost equal to the full Railway risk, but to charge a very low alternative rate and the merchant to risk very little.

3. It will also be necessary to considerably modify the conditions at present existing in regard to the packing and protecting of commodities offered for carriage. As it is, I hold the opinion that the packing of commodities needs drastic revision, as for instance in regard to piece-goods which are sold "by pieces," or, "pairs" and there should be a recognised sub-division in a piece-goods bale to comprise a number of smaller packages which should be sealed in an approved manner and contain a standard or recognised number of "pieces" or "pairs."

4. In my opinion the claims on account of pilferage and theft on Railways are in a large number of cases an attempt at a swindle, sometimes deliberate on the part of the actual consignor and sometimes due to slack supervision in packing—short packing being effected by consignors' servants. This Railway can produce evidence of the second type of case happening to goods from two European firms in Calcutta and it is therefore reasonable to assume that the Railways suffer much more from this practice by Indian firms whose supervision well known to be less efficient. The conditions prevailing in the country have also to be taken into consideration as it is known that many of the Railway employees almost feel it their right to pilfer and all work together in hiding crime and it is unreasonable to ask Railway Administrations to accept greater responsibility—prevention is only possible by a very large increase in European supervising staff; further Indianising will make matters worse. Until the morale of the smaller merchants and of the lower grades of the Indian staff is improved, Railways should not be expected to give up any of the legal protections now existing. The statements are made that the Railway staff know the difference between goods booked at "Owner's Risk," or "Railway Risk," in a general way this is not true.

5. I should also like to refer to the settlement of claims as this has a close connection with repudiations supposed to be covered by the Risk Note. Railways, I believe, do not follow the spirit of Conference Rule 27 (x). Railways, as a whole, have agreed under this rule to pay a claim if it is not possible to definitely repudiate it within two months, I do not think this is being followed nor do I think claims are paid at once after verification, as I believe even if a destination Railway is able to verify a claim, payment is frequently delayed through some side-issues being raised and request made not to pay by one (or more of the Railways concerned. I hold very strongly that this Conference Rule should be most rigidly followed by all Railways in the interests of the Commercial Community.

The public are also irritated by answers given by Railways when claims are made. In the Claims office in nearly all Railways the European supervising staff can only actually deal with the more important claims and give general supervision and the "dealing" of most of the cases is chiefly in the hands of Indian clerks. It is inherent in the majority of Claim clerks, in dealing with Risk Notes, to quibble and manufacture every possible form of excuse to justify repudiating a claim and the more the European supervision is weakened, in my opinion, the greater will be the re-action of this evil on the mercantile community.

6. Consideration might also be given to combining the Risk Note and the consignment note and to repeat same on the Railway Receipt as to do so would be more convenient, save paper costs, and also prevent a great many audit debits being raised on account of wrong Risk Notes or absence of one.

Serial No. 62.

Letter No. $\frac{2717}{5(23)}$, dated Bhavnagar Para, the 3rd July 1922.

From—The Manager, Bhavnagar State Railway,

To—The Secretary, Railway Board, Simla.

**Bhavnagar
State Railway.**

In continuation of this office No. 2228—5 (23), dated 17th June 1922,* I have the honour to forward herewith also for consideration a copy of our Railway Pleader's No. G.-100, dated 16th June 1922, together with its enclosure.

*Serial No. 58.

This has reference to paragraphs 6, 7 and 8 of my above-quoted letter.

Copy of Railway Pleader's No. G.-100, dated 16th June 1922.

Re: discussion of Risk Note B and H in the Indian Legislative Council.

Letter of the Secretary of the Railway Conference.

In continuation of my letter about the suggestions as to the Risk Note, I have the honour to send herewith a copy of the extract of the judgment of the Revision Application No. 43 of 1921-22, in which the Court holds that if an affidavit be made by the Clerk before whom the Risk Note is passed it should be held to be proved, thus it proves that my suggestion to legislate a rule throwing the burden upon the plaintiff to disprove the Risk Note is supported by this decision. I, therefore, request the favour of your sending this to the said Secretary at once.

In the Court of the Judicial Assistant to the Agent to the Governor in Kathiawar.

Civil Revision No. 43 of 1921-22 from decree in Small Cause Suit No. 3 of 1920-21 of the Court of the Political Agent, Halar Prant.

1. Kothari Manilal Dharshi and others ... Applicants (Original Plaintiff).

versus

1. The Agents, Bombay Steam Navigation Company, Limited and others. ... Opponents (Original Defendants).

Claim Rs. 397-0-0.

There is one other point in which I wish to comment. Merchants send goods from Bombay, Calcutta and other distant places to Kathiawar, under Risk Notes and I have noticed many cases in which they have repudiated their signatures of their Agents. This necessitates the issue of a commission to examine witness in Bombay, and a great deal of unnecessary trouble and expense. I wish here to point out that the Railway Company's need only prove that the man who signed the Risk Note is the man who has presented the consignment note. It need not be proved that he is in any way connected with the consignee and his name does not matter a jot. It is perfectly obvious that the person who demands delivery must be his assignee agent or undisclosed principal, and is in each case bound by the agreement. He cannot be heard to plead that it has not been signed by any one having authority. This being the case I see no reason why an affidavit to the effect that the man who signed the Risk Note and the consignor were one and the same person, should not be accepted as *prima facie* evidence of the execution of the note; in which case it should be left to the plaintiff to ask for a commission to prove the contrary if he desires to do so.

RAJKOT;

The $\frac{12th}{13th}$ May 1922.

(Sd.) K. W. BARLEE,

Judl. Asstt. to the Agent to the Governor in
Kathiawar.

Replies received from Chambers of Commerce and other public bodies to Government of India letter No. 505-T.-21, dated 15th-17th April 1922.

Dated Lahore, the 10th May 1922.

Serial No. 63.

From—The Secretary, the Punjab Trades Association,

To—The Assistant Secretary, Government of India, Railway Department (Railway Board), Simla.

I have the honour to acknowledge the receipt of your Circular letter No. 508-T.-21, dated the 17th ultimo, enquiring with reference to the proposed appointment of a Committee to consider the question of revising Railway Risk Notes the views of this Association on the subject of the Committee's terms of reference. **Punjab Trades Association, Lahore.**

2. In reply I have been instructed by the Committee of this Association to say that they are of opinion that the present methods under which Railway Companies accept goods for carriage require alteration. It must not be overlooked that Railways have the right to refuse goods at Railway risk whenever they think it is to their interest to do so. At all times of trouble, strikes or other dislocation of traffic they safeguard themselves by refusing to accept consignments except at "Owner's Risk." This should, my Committee think, be legislated for, and there should be an enactment enforcing the acceptance of consignments at all times at Railway risk, when they would ordinarily be accepted at Owner's risk. The extra charge made for Railway Risk consignments should repay them for any losses incurred.

3. I am to add that consignors who despatch at Owner's risk have the lower rate to compensate them against loss, and they practically agree to carry the risk themselves. This is tantamount to a neglect of insurance which they would ordinarily have to pay in the difference between the Railway risk rate and the Owner's risk rate.

4. The onus of proof, which is at present thrown on to a consignor in a claim for compensation for loss, should, my Committee think, be modified in as much as the point devolves upon whether the loss occurred through the wilful neglect of the Railway Administration, its servants or Agents. The fact of the loss of the whole or any part of a consignment should, they consider, *ipso facto* be deemed to be a negligent Act on the part of a Railway administration or its servants or Agents. Railways practically in every claim refuse to admit negligence on the part of their servants, and it is not possible for a consignor to prove negligence, especially in cases where consignments are carried over several systems from station of despatch to station of destination. There should, I am to say, be no question of there being no claim for loss unless a complete package or a complete consignment is lost. My Committee are of opinion that if consignments are accepted by Railways for despatch they enter into a contract to deliver the whole of those consignments to the consignees whether deteriorated or damaged, or not. If the consignment or any part of it is destroyed, obviously they cannot deliver it, and the same applies to total or partial loss, and these two words "loss" and "destruction" should, my Committee think, be deleted from both Risk Notes forms B. & H. The words "Deterioration of or damage to" should remain. These two contingencies are the only risk consignors should run under the "Owner's risk" rate and they should have a right to compensation for partial as well as total loss. In other words the Railway administration should carry the pilferage risk in their "Owner's risk" contracts.

Dated Cawnpore, the 9th May 1922.

Serial No. 64.

From—The Secretary, Upper India Chamber of Commerce,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Upper India Chamber of Commerce, Cawnpore.

I am directed to refer to your No. 505-T.-21, dated the 15th-17th ultimo on the subject of the revision of Railway Risk Notes.

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Responding to the invitation to express their views on the subject and in particular on the two points specially referred to them my Committee desire to state as follows:—

Experience has shown that the use of risk notes B and H, have brought in a certain element of gambling to trade. In some cases these risk notes have been regularly and legitimately used as a system of self-insurance against loss in transit, advantage being taken to the full of the lower rates of freight quoted for Owner's risk. But this calculated use of the risk note system is the exception rather than the rule. The specially reduced rates of freight give a considerable advantage in price, and traders willing to take the risk book at owners' risk and thus fix the market rate. Other traders in order to compete must also book at Owner's risk, and thus, although the execution of risk notes B and H is meant to be optional, and is referred to as optional by the Railways, in practice booking at Owner's risk is forced upon the consignor or consignee if he looks to meet competition.

A great deal of doubt seems to have prevailed on the subject of proving responsibility, but it has been established beyond all question that the onus of proving that the loss of a consignment, or of portion of a consignment, was due to wilful neglect on the part of a Railway or of its servants, or to theft by Railway servants lies on the owner and not on the Railway. It is to this fact that is due the hardship of the risk note system to traders, for it is most difficult, if not impossible, for the owner to ascertain under what circumstances the loss has occurred. And yet this hardship is inevitable, for if, on the other hand; the claimant should not be required to prove that the Railway was responsible it would mean that the Railway would have to admit—unless it could prove the contrary—that every loss was, *ipso facto*, due to its own wilful neglect or to the neglect or dishonesty of its servants. No Railway could possibly accept such a responsibility and at the same time agree to carry the goods involved at a special reduced rate.

The immunity claimed by the Railway from responsibility for robbery from a running train, has, perhaps been the cause of most of the dissatisfaction that is felt in regard to these risk notes. They specifically provide that "wilful neglect" shall not be held to cover "fire, robbery from a running train or any unforeseen event or accident." The public entertain the feeling that, no matter what the circumstances of the theft may have been, the Railway will always find that it has taken place from a "running train." This does not seem to be justified. The Railway Police Committee could not obtain any figures to show that consignments booked at Owner's risk were more subject to pilferage than those at Railway risk, while on the other hand the Railway records go to show that far more claims are preferred in regard to stolen goods booked at Railway risk than for goods booked at Owner's risk.

My Committee are therefore of opinion that the Railways must, in reasonable self-defence, disclaim responsibility for loss from running trains when a special advantageous rate is obtained by the consignor. The latter cannot have it both ways. If he wants the Railway to take the risk he must pay the Railway.

In these circumstances my Committee feel that the present situation cannot be improved by any alteration in the form, construction and application in practice of the risk notes B and H at present in use. But they feel that in the general interest a change is necessary, and their proposals in regard to this change are stated in the third of the following recommendations, which they submit for the consideration of the Special Committee appointed to enquire into this matter—

- (a) That the principle of throwing the onus of proof on the consignor does not require modification, but must, if the Risk note system is to continue, be maintained.
- (b) That in order to make the question of responsibility more clear the present wording of the Risk notes may be changed so as to bring

the Indian Risk notes more into line with English practice than at present. The present wording of the latter portion of the Risk note which reads:--

.... from all responsibility for any loss, destruction or deterioration of or damage to the said consignment from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due to the wilful neglect of the Railway administration or to *theft by or to the wilful neglect of* its servants, transport agents or carriers employed by them" should be altered by the removal of the words "theft by or to the wilful neglect of" and the insertion, instead, of the words "wilful misconduct on the part of"

- (c) That since it is realised that this does not materially alter the situation the only alternative is the entire abolition of Risk notes "B" and "H" and of the optional Risk notes system, with specially reduced rates for the transportation of goods by the Railway at Owners' risk.

Dated Calcutta, the 16th May 1922.

From—The Managing Directors, Calcutta City Flour Mills Company, Limited,

Serial No. 65.

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

In response to your Circular No. 193—1922 forwarded to us by the Calcutta City Bengal Chamber of Commerce, we enclose herewith a copy of letter* addressed to the Chamber sometime ago which expresses our views fully and leaves nothing to add.

Calcutta City Flour Mills, Co., Calcutta.
*Serial No. 66.

Copy of letter from Messrs. Andrew Yule and Company, Limited, Managing Director, to the Secretary, Bengal Chamber of Commerce, Calcutta, dated Calcutta, the 19th April 1922. Serial No. 66.

We understand the High Courts of both Calcutta and Bombay absolve the Railways from all liability and responsibility in respect of goods despatched under Risk Note Form "B." In the case of flour or other grains, so long as the actual package or bag is delivered at the destination, the railway is in no way liable even if the entire contents have been extracted *en route*. We understand that in a recent case for compensation for missing bags it was even found that the railway is not liable unless wilful neglect or theft on the part of the Railway or its servants could be proved.

Messrs. Andrew Yule and Co., Ltd., Calcutta.

Obviously it is practically impossible for consignees to prove wilful neglect or theft on the part of the Railway or its servants, and it seems to us, the very fact of short or non-delivery should, in common justice be *prima facie* evidence of neglect on the part of the Railway.

It would seem highly inequitable that if the railway accepts a quantity of flour in bags for transportation, and delivers the empty bags at destination, no action can be successfully brought against the Railway to cover this loss, by reason of the conditions imposed through Risk Note Form "B."

Moreover we cannot help feeling that this lack of responsibility can hardly be conducive to special care and watchfulness on the part of the Railway for the safe transportation and lack of pilfering of goods entrusted to them, and that if the Railway Companies were liable for goods lost in transit, in all probability considerably greater attention would be given to the question of the prevention of pilfering, to the benefit of all concerned.

As this matter affects the interests of merchants generally, we feel that the Chamber should take action with a view to the modification of the Risk Note Form "B," and we trust they will see their way clear to move in the matter.

Serial No. 67.

No. 19-90-22, dated the 15th May 1922.

From—P. D. PATEL, Esq., B.A., Barrister-at-Law, Secretary, Rangoon Trade Association,

To—The Assistant Secretary to the Government of India, Railway Department (Railway Board), Simla.

Rangoon
Trades
Association.

With reference to your letter No. 505-T.-21, dated the 17th April 1922, I have the honour to state that in the absence of Risk Note Forms "B" and "H," my Committee is not in a position to express a definite opinion. At the same time my Committee would venture to suggest that the law as it stands is harsh enough to the consignor and any relief given to the consignor, in the matter of compensation arising out of loss of goods, will be welcomed.

Serial No. 68.

No. 4-C. M.-5-1922—12-C. M.-7-1922, dated Calcutta, the 19th May 1922.

From—The Secretary, Calcutta Trades Association,

To—The Secretary, Government of India, Railway Department (Railway Board), Simla.

Calcutta
Trades
Association,
Calcutta.

In reply to your letter No. 505-T.-21, dated the 15th April, 1922, requesting to be favoured with the Association's opinion regarding the terms of Risk Note Forms "B" and "H," I am directed by my Committee to refer you to this Association's letter*, No. C. M. 4-1918, dated the 2nd April, 1918, which dealt fully with the following points :—

*(Printed as Serial No. 70).

1. Responsibility for the loss, destruction or deterioration of goods delivered to a Railway Administration for carriage by Railway.
2. Disposal of goods not called for by consignees at station of destination.
3. Mistakes made by a Railway Administration with regard to the forwarding of goods, legibly and clearly marked to a wrong destination.
4. Responsibility of a Railway Company for the loss of goods accepted for conveyance to a particular destination beyond the limit of its own line of railroad.
5. Rates of freight on :—
 - (a) Musical instruments.
 - (b) Fragile goods.
 - (c) Bulky articles such as iron girders, shafts, rails, etc.
6. Insurance in the case of " Excepted " articles.

Attention is drawn to the Association's letter above referred to, in order that the Special Committee now appointed might the better appreciate the general dissatisfaction with which Members of this Association view the working of the Indian Railways Act as a whole.

I now have the honour to hand you herewith a copy of the correspondence* between Messrs. Samuel Fitze and Company, Limited, the East Indian Railway and the Darjeeling-Himalayan Railway, regarding losses sustained in connection with certain goods found to be missing which were booked at Owner's Risk rates.

* Serial No. 69.

You will note from Messrs. Samuel Fitze and Company's covering letter, dated the 16th instant, that the firm makes out a strong case for consideration, and this Association is of opinion that the terms under which goods are entrusted to a Railway Administration for carriage require considerable modification, and that Railway Companies should not be allowed to repudiate claims merely under protection of the clause " Running Train Thefts, " which

my Committee contends should not be admissible, nor should it be possible for such thefts to occur while goods are in transit.

With reference to Risk Note " B, " it is observed from the freight tables that the average reduction allowed for booking at Owner's Risk is approximately one-third of Railway Risk rates, and it is felt that in view of this small difference, the Railway Company's liability should include pilferage or loss of the contents of any particular case, provided the value of the pilferage or lost goods exceeds 1-3rd of the value of that particular package.

It is the experience of the Members of this Association that when goods are booked at Owner's Risk, pilferage invariably takes place, and the general opinion is that Railway employees have means of ascertaining that no responsibility attaches to the Railway Companies, thus encouraging dishonesty owing to there being no Police or Railway enquiry as claims are inadmissible except in such instances as are mentioned in the Risk Note.

In the case of goods which have been tendered to and accepted by any Railway Administration as being in good order and against which a *clear receipt* has been issued, the onus of proof should fall on the Railway Company. The only exceptions being damage by strikers, rioters, collisions or fire, provided every reasonable care has been taken to protect the goods. My committee suggest that Risk Note Forms " B " and " H " should be corrected as follows :—

Destruction.—Due to the action of strikers, rioters, collisions or fire, provided reasonable care has been taken to protect the goods in their custody.

Damage.—If due to rough or careless handling, the Railway Company concerned should be responsible for any claim arising which in amount is more than 1-3rd of the value of any particular package, the onus of proof being with the Railway.

Deterioration.—This should be carefully defined.

Line 15.—" From any cause whatever " should be deleted.

Line 16.—After consignment or any portion of the contents of a particular case provided the value of the damaged or lost goods does not exceed 1-3rd of the value of the case.

Line 16, End.—If the onus of proof is placed on the Railway Company these lines should be deleted.

With regard to Risk Form " X ", as this stands at present, the liability of the Railway Company is fixed at Rs. 100 only, and in view of the high cost of all commodities, my committee is of opinion that the amount of liability on the part of the Railway Company should be increased to at least Rs. 500.

Copy of a letter from Messrs. Samuel Fitze and Co., Limited, Calcutta, to the Serial No. 694 Association, dated the 16th May 1922.

In confirmation of our interview with you last week, we beg to state that the following are the main facts regarding the missing bale of goods, in connection with which we have been unable to obtain any redress from the Railway Company.

Two bales of carpets were despatched from Mirzapore to Calcutta under one Railway Receipt at Owner's Risk, and only one bale arrived in Calcutta. A short certificate for one entire bale was given at the time delivery was taken of the other bale.

On our presenting our claim for the value of the missing bale we were informed by the East Indian Railway Company that as the two bales had been booked under one Railway Receipt at Owner's Risk under " H " Receipt, the Railway Company were not liable for *part loss or damage*, as this loss was governed by their clause under *Running Train Theft*.

We, therefore, lost the value of one bale of carpet (Rs. 500), although the difference between the freight at Owner's Risk rate and Railway Risk rate was in the neighbourhood of between Rs. 2-12-0 and Rs. 3-8-0.

We are given to understand that in a number of similar cases where the consignor or consignee has made a claim for the value of the lost part consignment, the Small Cause Court verdict has been given in his favour, whereas on the appeal being taken to the High Court the verdict invariably has been reversed in favour of the Railway Company.

Another case is where we sent a bale of goods to the Victoria Hospital, Darjeeling, on account of the Lady Hardinge Linen League. The bale arrived in a damaged condition, and although the Medical Officer-in-Charge of the Hospital applied for open delivery, this was refused on the assumed rule that when goods were booked at Owner's Risk, open delivery was not at any time given.

*Not printed.

We enclose the file of correspondence in this case for your reference.*

Serial No. 70.

No. C. M.-4-1918, dated 2nd April 1918.

From—MR. H. C. JEWELL, Secretary, Calcutta Trades Association,

To—The Secretary, Railway Board.

By direction of the Committee of the Calcutta Trades Association I now have the honour to reply to your letter No. 574-T.—17, dated 31st October 1917, with reference to the working of the Indian Railways Act.

The question has received the careful attention of my Committee, and in response to a circular issued to the several members of the Association, certain complaints regarding rates and other defects in the Act have been duly brought to the notice of this Association, amongst which the following appear to call for special attention.

1. *Responsibility for the loss, destruction or deterioration of goods delivered to a Railway Administration for carriage by railway.*—In this connection Messrs. Samuel Fitze and Company, Limited, have placed at the Association's disposal copies of the correspondence which has passed between themselves, and

(a) The East Indian Railway, and

(b) The Chairman, Railway Board.

Their letter dated 11th February 1918, to the latter gives a full resumé of the facts of their particular grievance against the East Indian Railway, and it is, therefore, unnecessary for us to deal with the matter in detail.

My Committee have gone very closely indeed into this case, and it would appear that a very strong case has been made out for the necessity of issuing Kutchka Receipts for such goods as are duly tendered to a Railway Administration for carriage by railway to up-country stations, provided the goods so tendered are properly marked in accordance with the rules of the Railway Company in question. The present system of not granting receipts until the goods are actually ready for despatch is one which has met with unanimous disapproval of the members of this Association, who are strongly of opinion that they are deprived of any measure of protection against loss, destruction or theft.

The next point in connection with Messrs. Samuel Fitze and Company's complaint is their inability to obtain any redress from the East Indian Railway with regard to the cases alleged to have been lost from the sorting yard at the Howrah Goods Shed, and with reference to this point the Committee

would respectfully draw your attention to section 72 of the Indian Railways Act which reads as follows :—

“ The responsibility of a Railway Administration for the loss, destruction or deterioration of animals or goods delivered to the Administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under section 151 of the Indian Contract Act, 1872 (IX of 1872). ”

As also to section 151 of the Contract Act referred to :—

“ In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. ”

In considering these two sections together, the Committee are of opinion that a very strong case could be made out against the East Indian Railway, and your Board's attention is particularly directed to this case.

2. * * * * * *
 SERVANTS OF INDIA SOCIETY'S
 BRANCH LIBRARY
 3. * * * * * *

4. *Responsibility of a Railway Company for the loss of goods accepted for conveyance to a particular destination beyond the limit of its own line of railroad.*—This question has been raised by the French Motor Car Company, Limited, who complain that they are unable to get any redress from the Great Indian Peninsula Railway for the loss of a box containing two taximeters worth Rs. 600 which was despatched to them from Bombay by goods train *at owner's risk*. The Great Indian Peninsula Railway are able to prove that the box in question was made over by them to the East Indian Railway and consequently they deny any liability for its loss. The East Indian Railway likewise deny liability on the grounds that the box was booked *at owner's risk*, but admit the firm is entitled under section 75 of the Indian Railways Act, to a maximum compensation of Rs. 99, which the East Indian Railway are agreeable to pay.

In this connection I am to direct your attention to the English Law on the subject, which is as follows :—

“ If a Railway Company accept goods for conveyance to a particular destination beyond the limit of its own line of railroad, *and the goods are lost while in the hands of another Railway Company to whom they have been delivered to be forwarded on the journey*, the first Railway Company is the party to be sued by the owner of the goods, as being the party contracting with him for the conveyance of them, *unless the Company has by express contract limited its liability to loss and damage occurring on its own line of railway,* ”

from which it will be seen that the first Railway Company contracting with the consignor for the conveyance of the goods is liable for any loss or damage occurring to such goods while in the hands of another Railway Company to whom they have been delivered to be forwarded on the journey. My Committee, therefore, feel that this question should be carefully gone into by the Railway Board, for the reason that as matters now stand, a consignor is unable to fix responsibility upon any particular Railway Company in the case where goods are consigned to a station beyond the limit of the receiving Railway Company's railroad and are subsequently lost in transit.

* * * * * * *

Serial No. 70

No. 341-22, dated 18th May 1922.

From—The Secretary, United Provinces Chamber of Commerce, Cawnpore,

To—The Secretary to the Government of the United Provinces, Public Works Department, Railway Branch.

United
Provinces
Chamber of
Commerce,
Cawnpore.

I am directed to acknowledge the receipt of your letter No. 175-60-1922—R. E., dated the 5th May 1922, forwarding a copy of a letter No. 505-T.—21, dated the 15th-17th April 1922, from the Government of India, Railway Department, on the subject of Railway Risk Notes and inviting the Chamber's views on the points raised therein.

In reply I am to enclose a copy of a letter addressed by me in June 1921, to the Director of Industries, United Provinces, on this subject. The views of the Chamber in connection with these risk note forms are stated at length in that letter and my committee have nothing to add to it. The letter covers both the points specifically mentioned in paragraph 4 of the Government of India's letter. The grievances of the mercantile community in respect of these risk notes, particularly risk note forms B. and H., are of very long standing, and now that the Government of India have at long last, taken up the question of revision of these risk notes, it is strongly hoped that the grievances, set out in my enclosed letter, will receive full consideration. My committee are emphatically of opinion that forms B. and H. should be so modified as to make the Railway Administration liable for all losses whether of full or of part consignments of packages and for damages through undue detention, wrong despatch, etc., unless the Railway concerned prove that the loss or damage was not due to any fault of its employees.

Serial No. 71.

No. 9344, dated 13th June 1921.

From—The Secretary, United Provinces Chamber of Commerce, Cawnpore,

To—The Director of Industries, Cawnpore, United Provinces.

I have the honour to acknowledge the receipt of your letter No. 1946-M.—(E), dated the 9th-13th May 1921 and the enclosures on the subject of risk note forms B. and H. and in reply to say as follows:—

The grievances of the mercantile community in respect of these forms are of very long standing. They date as far back as the publication of the Indian Railway Bill in 1888, when the Bombay Chamber of Commerce strongly opposed those sections in the Bill, which empowered the Railway Companies to introduce such forms. On the passing of the Railway Act the said forms were introduced with the approval of the Governor General in Council. Ever since the introduction of the forms agitation for their abolition or amendment has been going on. Most of the Chambers of Commerce and other Commercial Associations, both European and Indian, have taken part in this agitation. Year after year the Indian Industrial Conference has urged the abolition or modification of the forms.

At the conference of the Indian Railway Association in October 1914 some modifications were agreed to and the forms were so amended as to make a railway company liable for the loss of a complete consignment or of one or more packages forming part of a consignment. But the small protection thus afforded to the consignors by this amendment has in practice been found to be more shadowy than real. The exceptions under 'wilful neglect' given at the end of the forms generally always protect the Railway Companies from liability. Nothing is easier for a railway administration than to declare that the loss was caused by robbery from a running train; and thus be absolved from all responsibility in the matter. Moreover, the onus for proving 'wilful neglect' even for cases not covered by the 'exceptions' is on the consignor and not on the railways. It is almost impossible to establish such a proof in a court of law. The result, as we see, is that a suit for damages in such cases seldom, if ever, succeeds.

The attitude of the Government of India which repeated protests and complaints on the part of almost every section of the mercantile community in

this country has so far failed to alter—seems throughout to have been that consignors knowingly undertake the risks involved under forms “B” and “H”, in order to take advantage of a specially reduced rates, and that, if they want to cover these risks, they should elect to send their goods at “Railway Risk” and pay the full, or higher rates. The argument sounds plausible enough but will not bear close examination. It does not take into account the difficulties of the consignors in the matter. The difference between the two sets of rates is very great. So long as the lower or concession rate exists, and in spite of the disadvantages attaching to it, is accepted by a large body of consignors, the others, even though they would like to pay the higher rate and avoid the risk, are compelled owing to keenness of competition, to choose the lower rate. From the enquiries made by this Chamber from its constituents it appears that the mercantile community would generally welcome the abolition of the concession rate and the fixing of an uniform rate, higher than the concession rate, and lower than the full rate, say the mean of the lower and higher rate.

There are certain responsibilities in respect of consignments entrusted to railway administrations from which as common carriers, they should in no case be absolved, irrespective of the question of higher or low rates. Consignors and consignees have very often to suffer great inconvenience and heavy losses, such as in cases of perishable goods, owing to abnormal delay in delivery caused by the gross carelessness of the Railway servants, in the way of detentions, wrong despatch, delay in transshipment, etc. The merciless handling of goods by the Railway coolies while loading and unloading often causes serious damages to some consignments. The mere fact that a concession rate was paid should not be enough to absolve the Railway administration from responsibility in such cases. But from the common fate of the suits brought against the railways, from time to time, it is clear that the forms “B” and “H” do completely protect railways. To the best of the information of the Chamber the railway administration in England are in every case responsible for loss or deterioration through undue detention and delay caused by carelessness.

As has been mentioned above, the railways generally escape liability by pleading ‘robbery in a running train,’ it being generally impossible for the poor consignor to establish the contrary. Now, most of these running train, robberies, assuming that they really occur so frequently as the railways would have us believe, could be prevented by the small precaution of securely locking the wagons instead of merely bolting them and making a pretence of securing them by a meaningless bit of string and seal. This is only one example of the many small reforms that could be introduced by the railways with advantage. But in the safe security afforded by the Risk Note forms they do not care to take any steps in the matter. While on this subject I would also refer to the most unreasonable insistence on the part of Railways about the consignors signing railway risk note form A, even in cases when the packing is quite new and sound. The intending consignors, realising their utter helplessness in the matter, have to submit to this most unreasonable demand. It is superfluous to say why the demand is made.

The Chamber is, therefore, strongly of opinion that the forms in question should be abolished or at least so amended as to make a railway administration liable for all losses whether of full or of part consignments or packages and for damages through undue detention, etc., unless the railway proves that the loss or damage was not due to any fault of its employees. It is however doubtful whether it will be much use taking up the matter afresh with the Government of India just at present. Consideration will be deferred pending the publication of the report of the Indian Railway committee, who will probably deal with the subject. The report of the committee is expected to be put out shortly and it would be better if the matter is taken up with the Railway Board after seeing what the committee have got to say about these forms.

Serial No. 72.

Dated Calcutta, the 20th May 1922.

From—The Secretary, Indian Piece-Goods Association, 20, Noor Mull Lohia Lane,
Calcutta,

To—T. V. SHISHAGIRI IYER, Esq., M.L.A., Chairman, the Railway Risk Note
Revision Committee, Simla.

Indian Piece-
Goods Associa-
tion, Calcutta.

With reference to the communiqué dated the 21st April last wherein the appointment of your Committee by the Government of India, with you as their Chairman, was announced, we beg to address you as follows very fully on the whole question of revision of Risk Notes from the various points of view.

General Remarks.

1. The first and foremost thing to be borne in mind is the seriousness of the problem of waste brought about by loss and damage in transit which is a great economic loss to the country.

2. The responsibility of the Railway as Carriers is limited first by the Indian Contract Act and then by section 72 of the Indian Railways Act. Under the former, the Railway is bound to take as much care of the goods entrusted to its charge as a man of ordinary prudence would take of his own goods and this liability is again further limited by the Railway Act (Sec. 72) wherein it is provided that by an Agreement on a form approved by the Governor General in Council, the Railway Company can further reduce its responsibility under the Contract Act.

3. An Agreement is an agreement to the terms of which the contracting parties should be able to agree without demur from either side or in other words the terms should be fair and readily acceptable to both parties. Therefore, one party should not be compelled by undue pressure to accept conditions imposed on it by the other party in a state of helplessness.

4. Railways are Transportation Agencies meant to render service to the public and are there for attaining public good. And it is therefore imperative that goods entrusted to their care should be available for delivery at destination and must not be entirely, and mostly, lost to the owners. If this is not the object aimed at, it must result in Railways being utilised, in respect of goods carried by them, by dishonest people as the means of increasing their illicit gains. We would like to make it clear that it is not intended to imply by this observation that the Railway staff in general are dishonest, but considering the class of men employed in the lower menial grades, and the very low salaries that they draw, the temptation that is thrown in their way by the Risk Note conditions does not make such staff over honest, and with such conditions prevailing, the higher staff at stations are not liable to be very careful.

5. Also while it is not claimed that the Railways should carry the goods in fire-proof and thief-proof vans and store them in similarly secure godowns, it is expected that the Railways should avoid all chance of losses by doing the utmost in their power.

6. When the staff know that their employers are not responsible in any way in respect of certain commodities and that when claims are preferred the Railways, beyond repudiating them on the strength of Risk Notes and expressing their regrets, have not got to pay anything in the way of compensation and do not, therefore, recover anything from the staff or are not anxious even to locate the responsibility, the staff become bold and are tempted to be careless, and in some cases dishonest.

7. Thus we see that pilferages and thefts in the case of consignments of Ghee, Fresh fruits and Piece Goods are great, because it is a well known fact that these consignments are mostly booked at owner's risk.

Risk Note Form "A."

8. Although Risk Note Forms "B" and "H" are the most important ones we propose first to deal with Form "A." The main object to be attained by Form "A" is that the Railway should not be held liable for loss caused by a reason for which the owner was primarily responsible. Thus if a tin of Ghee was tendered without an outer cover of wood and the lid or the bottom gave way in the course of handling and contents escaped the Railway should not be held responsible. Similarly, if a bale of Piece Goods was not securely packed and bound tight with iron bands and if the bale got torn and insecure and the contents escaped the Railway should not be held responsible, but if, on the other hand, a tin of Ghee is broken open or a bale of Piece Goods is tampered with, the Railway should be clearly liable.

9. It is perhaps within the knowledge of the Railways that their staff obtain Risk Notes on Form "A" without any good grounds, and that securely packed bales are described as loosely packed, and the merchants are obliged to accept such remarks in order to save detention to the goods, because, if they object and refer the case to District Traffic Superintendent it would take at least two or three days before an Inspector would come and in the meanwhile goods will be lying on the Railway premises exposed to great risks.

10. So that if Risk Note Form "A" is taken in genuine cases, and strict orders are issued that every case of unnecessary harassment to the public would be taken serious notice of and if this order is acted upto, a great deal of the evil under Form "A" would be avoided, but this can only be attained if the receiving station staff, particularly at the big terminal stations, bring to notice all cases where a well packed bale is received and the Railway Receipt showed that it was loosely packed or a sound bag is received while it was described to be torn and if in all such cases the staff are punished, the complaints in respect of Form "A" will disappear.

Forms "B" and "H."

11. In the first place, the difference between the Railway Risk and the Owner's Risk Rates should not be such as to prevent the merchants from taking advantage of Railway Risk Rates when they desire to do so. In the report of the Departmental Committee of the Board of Trade in London published in 1911 and referred to on pages 573 and 574 of Railway Board's Monograph on Indian Railway Rates, it was distinctly pointed out that in the interests of the public it was imperative that the Railway Companies should not be in a position to put undue pressure on traders to accept liability for loss or injury to traffic and the same Committee said that alternative higher rates at Railway Risk should be commercially reasonable alternative rates. In their opinion differences of even 20 to 20 per cent were considered not reasonable, as they considered that these differences were greatly in excess of the actuarial value of the risk so that the alternative rate could not be a really reasonable alternative rate unless the public could take advantage of it freely. If the Insurance Premia of the Marine and Fire Insurance Companies were high, the public and the traders would not have been able to take advantage of the safety, offered to the trade by such companies. *The very fact that Railway Risk Rates are hardly made use of in spite of heavy and continued losses, is a prima facie evidence that the Railway Risk Rates in India are unduly high.*

12. We would confine our observations in the above connection to Piece Goods. Under the new classification of goods introduced from 1st April 1922, the Owner's Risk Rate is fourth class or '62 pie per maund per mile and the Railway Risk Rate is sixth class or '96 pie per maund per mile or the percentage of the excess difference is 54. To a wholesale dealer, who deals in wagon loads, the margin of profit between the mill price, and the price, the wholesale dealers get from the retail dealers is small, and in some cases, there is hardly any margin at all. Besides, the great delays that take place in transit, which have nowadays become customary, lock up large sums of capital for a long time without earning any return, and when the goods do arrive at destination, after delays, the wholesale dealers are naturally anxious to dispose of the

goods at once even at a small margin and the profit per bale of five maunds is on an average, not more than Rs 8 to 10 and if Rs. 4 to 5 goes out of it in the way of paying for Railway Risk Rates the already low profits are further reduced by 50 per cent and this would make business impossible. Thus even in the past with a difference of 32 per cent between the Railway Risk and the Owner's Risk Rates the wholesale dealers were unable to take advantage of the Railway Risk Rates in spite of huge losses, and the wholesale dealers are not a negligible quantity because the retail dealers are hardly in a position to lock up their capital and to take the risks of transit on account of the smallness of their holdings. But for the wholesale dealers the price of the Piece Goods to the consumers would be much higher.

13. We are sorry we are unable to understand the argument of Colonel Waghorn, President, Railway Board, which he put forward in the Assembly, that the Railway Rates would have to be high if the Railways were required to take greater risks than they did. So far as we can see and so far as Indian Piece Goods are concerned, the commodity we are interested in particularly, we find that the increases in Railway Rates from 1st April 1922 have been threefold. *Firstly, the Owner's Risk Rate has been enhanced from 2nd Class to 4th Class, i.e., from 50 pie to 62 pie, i.e., by 24 per cent. Secondly, the Railway Risk Rate has been enhanced from old third class to new sixth class, i.e., from 66 pie to 96, i.e., 45 per cent. Thirdly, the difference between the Owner's Risk and Railway Risk Rates, which was formerly 32 per cent. is now 54 per cent. All these go to show that one endeavour of the Railway Board, so far at least the Piece Goods trade is concerned, has been to debar the Piece Goods merchants from taking any advantage of the Railway Risk Rates. Thus the merchants to-day, at least in the Piece Goods trade, have stronger grounds for complaint than they had ever before. All the penalty which the Railway Board could impose has already been imposed on us but nothing has so far been done to minimise our loss. In this connection if it not be considered out of order, and if our remarks are indulgently taken as coming from those who have been great sufferers, we would take the liberty to respectfully mention that Colonel Waghorn has already taken from us all that he would and could take if he were to give us more safety, which we very much regret we have not yet got.*

14. The Risk Note Forms "B" and "H" provide that a Railway is not responsible for any loss or damage, except in the case of loss of a complete package or a consignment due :—

(a) either to the wilful neglect of the Railway Administration

(b) or to the wilful neglect of or theft by Railway servants

but this "Wilful Neglect" does not include Fire, Running Train Robbery or any other unforeseen events.

15. We will now deal with the various detrimental aspects of these conditions.

There have been several cases in which claims for losses have been declined by the Railways on the ground that they were due to Running Train Robberies. Under the definition of the term Robbery in the Penal Code there must be violence or threats of violence to call thefts Robberies, but in no case the Railway Companies, at least in their correspondence with the constituents show or prove that the thefts committed in such cases were accompanied with violence or fear of violence. Therefore, the Risk Note conditions should be such as to require the Railways to prove that *actual and real robbery* was committed before they can be absolved from responsibility and the term *Running Train robbery* must not include robberies committed while the trains were within station limits and were not actually running. It is imperative that running train robbery must be proved as running train robberies. Inferences and assumptions should not entitle the Railways to repudiate claims on the ground that running train robbery took place. If only running train robberies were the occasions which absolved the Railways from responsibility we would be satisfied if the conditions as suggested above were imposed, but under present conditions demanded by the Risk Notes such limitations would be futile unless and until the rest of the conditions disappear at once.

16. The whole crux of the situation is that the party suffering the loss has got to prove that there was wilful neglect on the part of the Railways or their servants or theft by their servants to make the Railways liable for the loss, and these conditions are worse than the condition of running train robbery, and the Railways have been taking advantage of the former and are thus putting the merchants to heavy losses. It is impracticable on the part of the public to prove that the Railways or their staff were neglectful or that the Railway staff committed thefts. Thus the whole thing amounts to this. Goods worth thousands of rupees may be entrusted to a Railway for carriage and the Railway may lose the whole of such goods without the owner being entitled to receive a single pie in the way of compensation, and this fact being widely known it tempts the lower menial class of Railway employees to commit thefts themselves or to connive with outside thieves, as some of the evidence before the Railway Police Committee disclosed. And at the same time there is another worse effect which is only natural. The staff in grades higher than the menial staff get demoralised in this sense that they become careless and neglectful of the interests of the public in respect of the goods entrusted to the Railways.

17. Although the Risk Note condition does not lay down that the onus of proof, that the Railways were wilfully negligent or that their staff committed the theft, lies on the owner, it is automatically so. When the Railways put forward the plea that due care was exercised by them in the carriage of the goods and that the Railway staff did not commit the theft, it then falls on the party suffering the loss to disprove this or to prove otherwise. Both of which are impossible. The goods remain in the hands of the Railways for days and weeks and in some cases for months, travel over hundreds of miles passing over several Railways and for the party to prove that the Railways or the staff were neglectful wilfully or that the Railway staff committed the theft, it would be necessary to book men along with the consignments in each case from start to finish to find out whether one of the above happened. We do not see that anything else would enable the owners to get the necessary proof.

18. Then there is a case of complete absolving of Railways from responsibility in the case of fire. If the fire was caused by spontaneous combustion or due to a spark from the engine then there would be some excuse but there have been instances where fire could not be said to have occurred through these causes and such fires might have been due to hot axles, naked lights, or staff carelessly smoking, and if in these cases the Railways are not held liable simply because they have charged Owner's Risk Rates, which are paying rates to the Railway and are the trade rates, with an impossible alternative Railway Risk Rate, the Railways cause more evil than good.

19. In our opinion the Railways should be held liable for complete loss of a package or a consignment in any case, and it is also equally imperative that in the case of pilferages where more than one-sixth of the goods in a package is lost the Railways should be held responsible. Cases have happened where several bales of Piece Goods each containing goods worth Rs. 600 to 700 have arrived with a few pieces of cloth not worth more than Rs. 50 to 100. This process of waste is neither good for the community nor for the Government, and not even for the Railways.

20. We find from the report of the Interstate Commerce Commission (Volume 57, February—June 1920) that it was plainly said in America that the problem of waste due to loss and pilferage of goods in transit was a very serious one from a public and national point of view and it was strongly remarked "that anything that could be done to reduce such loss and damage was manifestly in the interests of Carriers and Public alike."

21. We would now sum up:—

- (1) The process of waste that is going on, on Railways, demoralises the Public servants, as Railway servants are Public servants.
- (2) The Railway staff are getting more careless of Public interests.

- (3) The loss of vigilance and care on the part of the Railway people is an inducement to dishonest people to take advantage of the same.
- (4) The economic waste in money, labour and materials, piled from day to day and over all Railways in India, is a great loss to the Country.
- (5) The price of goods must increase through such losses.
- (6) The capitalists in the way of wholesale dealers are getting shy and their systematic and repeated loss of money is curtailing their sales and savings and thus also their power in assisting towards Industrial Development of the Country.

22. The whole question deserves to be considered from a very broad point of view and not only from the point of view of responsibility of the carriers to the owners of goods in a particular transaction, although we would emphatically point out that even as between two contracting parties the present Risk Note conditions enable one of the parties, *viz.*, the Railways, to exercise undue pressure on the other party to accept unreasonable conditions. We have proved this conclusively.

23. We therefore pray that:—

- (a) The difference between the Owner's Risk and Railway Risk Rates should not be more than 5 to 10 per cent and this percentage should be attained by reducing the Railway Risk Rate and not by increasing the Owner's Risk Rate because we have proved that the taxation in the way of high rates in cases where the Railways carry goods at Owner's Risk has already been heavy (*vide* Paragraph 13 and the footnote below).
- (b) In order to remove temptations from the way of the Railway staff and to make the Railways take greater care, it is imperative that all conditions of wilful neglect, etc., should be removed and that the Railways should be held liable for complete loss of a package or also where the loss is more than one-sixth of the value of the goods in a package.
- (c) Running train robberies should be proved by the Railways and the onus of proof must lie entirely on the Railways to show that there were actually Running Train Robberies.
- (d) In the case of fires, the Railways should prove that it took place in spite of all precautions taken by them to prevent fire and to minimise losses after the fire took place and the onus of proof must lie on the Railways here also.

NOTE.—While in India the entire tendency is towards enhancement in taxation and in Railway rates, the English and Welsh Railways have announced important reductions in rates for goods traffic with the view to promote the revival of trade.—“In moving the approval of the minutes of the Railways and Transport Committee of the London Chamber, Mr. George A. Mitchell said that they had always recognized that the railway companies were in a position of great difficulty, but they had also felt that a reduction of railway rates was absolutely necessary for the restoration of trade and to contribute to a reduction of unemployment, and they were bound to take action in pressing the companies to make a reduction. He thought the railway companies would be forced sooner or later to make more drastic reductions than they had made and anticipate the reduction in the cost of living. Mr. James Morton, in seconding, said the high costs in railway transport and dock charges were more than anything else producing unemployment in many of the trades where unemployment was rife.”

It is to be noted that in England it has been recognized that for the revival of the trade and to reduce unemployment, the railway rates are to be reduced and this reduction in railway rates has taken place in England in spite of arguments on behalf of Railways “owing to high expenses, the railways required the high rates” but in India the railway rates and fares are considerably going up and the result will be that there will be a big drop in Trade, Commerce and the Industrial development of the Country. The enhancements in railway rates on articles which comprise the bare necessities of life, *viz.*, food and clothing (*e.g.*, Flour, Ghee, Piece Goods) must mean great hardships, especially when taken together with the heavy losses which take place in Railway transit and which have got to be counted along with the enhancements in railway rates in fixing the prices, the level of which must necessarily go up.

P. L. PANDYA,
Secretary

Telegram dated Rangoon, the 26th May 1922.

Serial No. 73.

From—The Burma Chamber of Commerce,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Your letter No. 505-T.-21, dated April 17th. This Chamber is in favour of owner's risk note being retained, but considers that its terms should be made less onerous to the consignor.

Burma
Chamber of
Commerce,
Rangoon.

No. 66, dated Bombay, the 24th May 1922.

Serial No. 74.

From—MESSRS. GOCULDAS JIVRAJ DAYAL AND HARJIVAN VALJI, Honorary Joint Secretaries, Bombay Native Piece-Goods Merchants' Association,

To—The Assistant Secretary, Railway Department (Railway Board), Simla.

We are directed by the Managing Committee of this Association to acknowledge the receipt of your letter No. 505-T.-21, dated the 17th ultimo and to send to you their opinion on the subject therein referred to as under :—

Bombay
Native Piece-
Goods
Merchants
Association,
Bombay.

With regard to query No. 1, our committee think that both Risk Notes Forms "B" and "H" require modifications on the following lines, *viz.*, that the onus of proof on the consignors should be removed and thrown on the Railway Companies in a claim for compensation arising out of loss of goods entrusted to a Railway Administration for carriage.

With regard to query No. 2, the words loss, destruction, or deterioration used in Risk Notes Forms should be defined in such a manner as to secure the right to compensation for the whole or part of the goods.

Our committee think that the number of thefts have been very frequent and the loss especially to the commercial community is very heavy and there is a legitimate grievance about it.

Railways are transportation Agencies to render service to the public and it is therefore imperative that the goods entrusted to their care should be available for delivery intact, but, it should not become the means to dishonest people of increasing their gains. The conditions of Risk Notes give great facility and temptation to men employed in the lower grades getting small salaries. When these people know that Railway Companies are not responsible in any way to the consignors, they are tempted to resort to pilferage. Although, our committee is fully alive to the fact that when merchants accept the liability as to the Risk Notes, they should not have legitimate grounds for complaint; but, the frequency of thefts have become so intolerable that there should be a remedy to stop such frequent thefts. Majority of Railway Companies are owned by Government and have practical monopoly to dictate terms and compel people to accept arbitrary terms which is most improper and unjust. It is the duty of a responsible Government to see that public and especially the commercial community are not deprived of the benefit of the ordinary law in this connection. When goods are tendered at Railway Stations, frivolous excuses are put forward to refuse to book the goods at Railway Risk and consignors are compelled to accept owner's risk note even though they would be willing to consign their goods at Railway Risk by paying extra charge. We have no desire to suggest that Railways should carry goods at their risk at a low rate. Our committee suggest that goods should be accepted by Railways at Railway Risk at a slightly increased rate. With regard to badly packed goods, there ought to be some arrangement at the Railway Stations to look into the question of defective packing there and then by a separate inspector and if there is any remark as to defective packing, there should be arrangement at the receiving stations to see whether the remark was correctly made or it was simply put forward to force the consignor to accept Owner's Risk Form and if the remark was not justified on seeing the condition of the goods at the destination, serious notice ought to be taken of the person who made the remark.

Lastly, our committee think that Railway Goods Rates have lately been sufficiently increased and the Railways can now carry the goods at their risk.

Serial No 75.

No. 849-1922, dated Bombay, the 25th May 1922.

From—The Secretary, Bombay Presidency Trades Association, Limited,

To—The Assistant Secretary, Railway Department (Railway Board), Simla.

**Bombay
Presidency
Trades
Association,
Limited,
Bombay.**

With reference to your letter No. 505-T.-21, dated 15th April and subsequent reminder dated 22nd May 1922, it is much regretted that owing to the absence of a large number of Members the matter has not received more detailed consideration by the Committee.

I am however directed to say that, with regard to paragraph 4, sub-paragraph (i), it is considered that the terms of Risk Note Forms "B" and "H" should be modified. Paragraph 4, sub-paragraph (ii)—in this reference my Committee consider that the wording of the Risk Note forms should be altered to secure consignor's rights under the circumstances mentioned but would suggest that, in cases of doubt or difficulty, an Arbitration Committee would possibly prove of value, such a Committee being formed, say, of two representatives of the Railway and one each from the Trades Association and Chamber of Commerce of the province concerned.

Serial No. 76.

No. 409-R, dated Calcutta the 26th May 1922.

From—The Acting Secretary, Indian Mining Association,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

**Indian Mining
Association,
Calcutta.**

I have the honour to acknowledge the receipt of your letter No. 505-T.-21, dated 17th April 1922, dealing with the proposed revision of the forms of railway risk notes and the appointment of a Committee to enquire into and report on that subject.

In reply to your request for observations or suggestions on this subject, I am directed to say that the Committee have no useful observations or suggestions to submit with reference to the points raised, and they desire the name of the Indian Mining Association to be identified with the views expressed by the Bengal Chamber of Commerce on this question.

Serial No. 77.

No. 14-R.-3, dated Karachi, the 26th May 1922.

From—The Secretary, The Karachi Chamber of Commerce,

To—The Secretary, Railway Department (Railway Board), Simla.

**Karachi
Chamber of
Commerce,
Karachi.**

I have the honour to acknowledge receipt of your circular letter No. 505-T.-21, dated the 15th-17th April 1922, to Local Governments and Administrations Railways' Chambers of Commerce and other public bodies, stating that the Government of India have appointed a Committee to consider the question of the revision of Railway Risk Notes, and inviting opinions on the form, construction and application of the Risk Notes in use at present.

In reply my Committee desires to offer the following comments :—

Reference Paragraph 4 (i) of your letter—My Committee is of opinion that the principle of throwing the onus of proof on the consignor in a claim for compensation *does* require modification, as Risk Notes "B" and "H" in their present form are distinctly one-sided.

Reference Paragraph 4 (ii)—My Committee takes this paragraph to mean that the Railway Board contemplates the inclusion in Risk Note Forms of compensation for the loss of a *portion* of a package, which relief is now excluded under Risk Notes "B" and "H." If this be the case, my Committee considers that this relief should certainly be afforded.

No. 7-10-7, dated Calcutta, the 27th May 1922.

Serial No. 78.

From—K. M. PURKAYASTHA, Esq., M.A., Secretary, Indian Mining Federation,
To—The Secretary, Railway Department (Railway Board), Simla.

I am directed to acknowledge the receipt of your letter 505-T.-21, dated the ^{15th}/_{17th} April 1922, inviting an expression of opinion of the Committee of the Federation regarding the proposed amendments of the Railway Risk Note Forms now engaging the attention of a Special Committee.

Indian Mining
Federation,
Calcutta.

2. With regard to your enquiry as to whether the principle of throwing the onus of proof on the consignor in claim for compensation arising out of the loss of goods entrusted to the Railway administration, I am to say that the Committee are in complete concurrence with the view that such onus of proof should be entirely thrown on the Railway. The existing principle in this respect is in their opinion opposed to the spirit of Section 76 of the Indian Railway Act and constitutes a direct violation of the ordinary contractual rights of the bailer and the bailee which is the legally defined relation between the consignor and the Railway Company according to Section 72 of that Act.

I am in this connection, moreover, to draw your attention to the series of marginally-noted caselaws where it has been definitely held that the burden of proving that damage was caused owing to no negligence on the part of the Railway Company rests entirely upon them. These decisions furnish clear evidence of the facts that the existing wording of the Risk Note Forms "B" and "H" is anything but satisfactory and should therefore be modified so that it may represent the minimum liability of the Railway Company which the interested public have a right to demand from them as public carriers.

3. A very important consideration in this connection suggests itself to the Committee: the protection afforded to the Railway Company by the existing terms of the Risk Notes has a tendency to confirm the present shortcomings of goods service. The rough handling of goods owing to paucity of adequate tackles and suitable type of trucks leading to frequent damage of goods is a familiar feature of goods traffic in this country. The problem of Railway theft and pilferage which was considered by the recent Railway Police Committee is also intimately connected with the existing provision of Risk Note Forms. In the colliery area, the pilferage of coal and coke has in the recent years assumed very serious proportions. It is a common knowledge that there are regular organizations which keep on a fair supply of domestic coke on the Calcutta market received from this questionable source. I am, therefore, to suggest to the Committee that under the revised terms of the Risk Note Forms "B" and "H" the right to claim compensation by the consignor may be extended to all sorts of loss, destruction, deterioration or damage in consignment instead of limiting it to merely a loss of the complete consignment or one or more complete packages as forming part of a consignment; moreover, it should be made clear that once the claim for a compensation is made by the consignor, it is incumbent on the Railway to prove that the loss, destruction, deterioration or damage of the property occurred owing to no wilful neglect on the part of the Railway or any of its servants.

4. With regard to the enquiry as to if the words loss, destruction or deterioration used in the Risk Note Forms should be altered or added to in such a manner as to secure for the consignor the right to claim compensation, I am instructed to say that in the opinion of the Committee such alterations and additions should be made. I am in this connection to refer to the remarks made by Mr. P. V. Seshagiri Ayyar, the Chairman of the Committee himself, in course of the debate, on the resolution for amendments of the Risk Note Forms (*vide* Legislative Assembly Debates, Volume II, No. 43, page 2955) where the Hon'ble Member pointed out that owing to an accepted interpretation it was not possible for the High Court of Madras to award compensation to consignor even though a consignment of rice was rendered unfit for consumption owing to the deposit of some acids on it. The instance cited is apparently one in

which the party had every right to demand compensation from the Railway Company which, however, they could only evade owing to the unhappy interpretation of the Risk Note Forms.

5. I am in this connection also to invite your attention to the frequent abuse that is made of the Risk Note Form "A." It is a common experience in the Railway that in spite of payment of freight at risk rates, the parties are made to sign "A" Form which frees the Railway Company from responsibility as to the condition in which the goods sent are delivered. The Committee of the Federation suggest that the Risk Note Form "A" should henceforth be made inapplicable in cases of consignment accepted at risk rates, i.e., to say the fact of signing a Risk Note Form "A" should not prejudice a party's claim for compensation if he has booked his goods at the Railway risk rates. Moreover, having regard to the extensive corruption prevalent in the Railway, the Committee further suggest that a class of goods should be definitely specified with regard to which the Railway shall have no right to insist signature of an "A" Form, e.g., engine, brassware, etc. Recently cases were brought to the notice of the Committee where engine parts, rails, steel, sleepers and even a boiler were treated by Railway Company as goods "liable to damage or wastage." It is needless to comment on such overzealous precautions of the Railway servants; apparently they are designed to leave open loopholes for theft and pilferage. The Committee of the Federation consider it essential that by providing for a more restricted and discriminate use of the Form "A," such a wide-spread corrupt practice should be put a stop to.

6. In conclusion, I am to state that no remedy of the present Railway corruption as facilitated by the various Risk Note Forms is, in the opinion of the Committee of the Federation, likely to be satisfactory, so long the margin between the Railway and owner's risk rates continues so wide as at present. It is apprehended, however, that the Committee appointed to consider revision of Risk Note Form is not under their terms of reference entitled to make any recommendation regarding revision of rate of freight but it is all the same felt that any suggestions which the Committee might incidentally feel disposed to make to the Government of India in this connection are likely to receive their careful and sympathetic consideration.

Serial No. 79.

Dated Madras, the 26th May 1922.

From—The Secretary, the Madras Chamber of Commerce,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Madras
Chamber of
Commerce,
Madras.

With reference to your Circular letter No. 505-T-21, dated the 15th-17th April, 1922, advising the Chamber that a Committee has been appointed to consider the question of the revision of Railway Risk Notes, and requesting our views on the form, construction and application in practice of the Risk Notes in use at present, and on the subject of the Committee's terms of reference.

I am directed, as the matter is urgent, to forward for your information, a copy of the finding* of a recent Sub-Committee of the Chamber relating to this question which is contained together with other information on page 17 of a proof copy of the Chamber's Annual Volume for the year 1921, sent herewith. Also copy of the Minutes† on the subject of your letter written by Members of the Chamber, as contained in the Agenda for the Chambers Monthly General Meeting to be held on the 30th instant, and which will then come up for discussion..

*Serial No. 80.

†Serial No. 81.

Serial No. 80.

Extract from page 17 of Report of Madras Chamber of Commerce, 1921.

It was generally considered that the position as regards claims for goods lost in transit was most unsatisfactory, the state of affairs being due to the peculiar judgment delivered in Bombay in connection with a case brought against a Railway, copy of which is enclosed. In this connection, it was

suggested that the Associated Chambers of Commerce might consider bringing a friendly suit against one of the Railways with a view to obtaining a saner judgment in order to put matters on a more satisfactory basis. Apart from this, it was considered that the present form of Risk Notes "B" and "H" should be amended in such a manner so as to render the Railway Company responsible for shortages as bailees of goods should be. If this should entail a slight enhancement of rates, this must be faced but something considerably less than the Railway Risk Rates should meet the case.

Madras Chamber of Commerce.

Serial No. 9E.

Committee to consider the revision of Railway Risk Notes.

3. Letter from the Government of India, Railway Department (Railway Board), dated the 15th April, 1922, advising the Chamber that a Committee has been appointed to consider the question of the revision of Railway Risk Notes, and inviting the opinion of the Chamber on the form, construction and application in practice of the Risk Notes in use at present and on the terms of reference, and requesting that the following points may receive special consideration :

(I) Whether the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration for carriage requires modification. (This refers specially to the terms of Risk Note Forms B and H).

(II) Whether the words loss, destruction or deterioration used in the Risk Note forms should be altered or added to or defined in such a manner as to secure for the consignor the right for compensation (for the loss of the whole or part of the consignment) for the above arising from the wilful neglect or criminal acts of the servants of the Railway Administration.

Members' Minutes.

Mr. B. T. Menzies.—So far as Risk Notes B and H are concerned there is little to add to the conclusion arrived at by the Sub-Committee appointed recently to consider this matter, *i.e.*, that these Risk Notes should be amended in such a manner as to render the Railway Companies responsible for shortage as Bailees of goods should be.

The peculiar Bombay judgment which was then discussed has since been reversed on appeal, but difficulty is still experienced in connexion with cut and damaged bags. If Railway Companies give a clean receipt for goods entrusted to them they should deliver them over to the consignee in the same condition as such goods were when received. Incidentally they should be responsible for damage occasioned by leaky wagons.

I would also call attention to Risk Note Form G :—

(1) We are obliged to execute this Risk Note for consignments of petrol, kerosene, lubricating oil, liquid fuel, etc. It may be true in theory that there are "Ordinary" or "Risk Acceptance" rates in the tariff for these goods, but in application there are no such rates, as if we tender these goods for acceptance at Railway Risk Rates we are asked to fill in Risk Note Form A under which the Railway requires us to hold them "harmless and free from all responsibility for the condition in which the goods may be delivered to the consignee at destination and for any loss arising from the same." We are, therefore, asked to pay Railway Risk Rates without the Railway accepting any risk.

(2) For kerosene, lubricating oil and liquid fuel, we are charged second class rates, *i.e.*, 42 pies per maund per mile, but for petrol we are charged sixth class rates, *i.e.*, 83 pies per maund per mile.

I cannot see that we obtain any additional benefit for paying practically double the freight on this commodity, or that the Railways give any additional

service or incur any additional risk to justify the much higher freight, as we are held responsible for damage to railway property and the property of third parties.

(3) I consider that far more efficient service should be given by the Railways at transshipment stations and that they should not shelter themselves behind the Risk Notes in order to claim immunity from liability to damage evidently caused by carelessness and inefficient transshipment. The same applies to transshipment of consignments owing to hot axled wagons.

Sir James Simpson.—I suggest that we forward a copy of the finding of recent Sub-Committee together with copy of Mr. Menzies' present "minute."

Mr. F. B. Wathen.—With reference to Mr. Menzies' note, I would remark that Railways are responsible as Bailees under section 72 of the Indian Railways Act, but they are permitted under the same section to contract themselves out of the full responsibility by an agreement in writing in a form approved by the Governor-General in Council. A Railway Risk Note is such an agreement.

2. It is evident that after taking all reasonable precautions the losses incurred on the carriage of goods can be made good only in one way, *viz.*, out of Railway earnings. If, therefore, by revised legislation a greater responsibility is placed on Railways under the Owner's Risk conditions, it is clear that the Owner's Risk Rates will have to be raised to meet the responsibility.

3. It has, I think, been generally assumed by the mercantile community that the present difference between the Owner's Risk and the Railway Risk Rates is too great. This view is not always correct in that lower rates (*i.e.*, owner's risk rates) are often quoted with other conditions attaching to them such as minimum weight condition, reduction for distance, etc., and the proportion of difference assigned to the actual risk is as often as not much smaller than the merchant imagines.

4. I enclose a statement giving three examples of actual consignments showing the difference in charge for Owner's Risk and Railway Risk, and it will be noted that the difference in charge is a small percentage of the actual value of the consignment although two of the Railway Risk Rates are 30 per cent. and over higher than the Owner's Risk Rate. These are cases in which the difference in rate is quoted for purposes of risk only and not for any other conditions.

5. If the conditions of Risk Notes are so revised by the present Committee as to protect Railways in a sufficient and proper manner, I express the opinion that Railways would be prepared to quote a Railway Risk Rate under equal conditions for traffic carried in wagon loads proportionate to any Owner's Risk Rate quoted, and amounting to an increase equal to a reasonable insurance charge only. This, however, would not be possible unless the Railway Board would agree to a revision of the schedule of maximum and minimum class rates and the general classification of goods.

No.	COMMODITY.	STATIONS.		WEIGHT.		VALUE.			Miles.	Railway risk rate per maund.	Owner's risk rate per maund.	Difference in charge between O. R. & R. R. per maund.	Percentage of difference in the two rates O. R. and R. R. on the full value of consignment.	Railway risk rate per maund per mile.	Owner's risk rate per maund per mile.	Railway risk rate per maund per mile is higher than O. R. rate per maund per mile by
		From	To	Maunds.	Seers.	Rs.	A.	P.								
5 Bales ..	Cotton Piecegoods ...	Surat ...	Bangalore City	11	16	2,128	0	0	919	2 9 1	1 13 11	0 11 2	42 per cent.	536	391	37 per cent.
									Via DDR and HG.							
15 Cases ...	Ghee ...	Belgaum ...	Ahmednagar...	18	30	1,280		0	344 (PA.)	1 4 5	0 15 9	0 4 8	38 per cent.	712	549	30 per cent.
25 Bales ...	Cotton, full pressed ...	Davangere ...	Colaba	125		6,875		0	542 (PA.)	1 4 4	1 3 10	0 0 6	0.18 per cent.	450	439	3 per cent.

Mr. A. F. Buchanan.—The wording of Risk Notes certainly requires re-drafting, the tendency at present being confusion of opinion as to Owner's and Railway Risk.

Taking Risk forms "B." and "H." with which we are particularly concerned, what, for instance, constitutes robbery from a running train? Under the above Risk Notes the Railway admit responsibility for each complete package *provided it is not lost from a running train.* It is impossible for the public to prove when and how a theft occurs and the Railway takes advantage of this.

Another clause is to the effect that the Railway will only be responsible for each complete package if loss is due to theft by its servants or neglect by the Railway or its staff. As a rule, the public are not able to enforce a claim for either out of Court, though obviously the loss of a complete package must be due to one or the other. We recently had an example of this, and the matter is still under correspondence.

I do not agree with Mr. Menzies' remarks about cut and damaged bags. If the public undertake to accept the risk of partial loss in return for a reduced rate it is unreasonable to expect the Railway to pay compensation.

I agree with Mr. Wathen in what he writes (paragraph 5).

The question of greater care at transshipping stations, etc., is a separate matter and one to which the Railway should give urgent attention.

Serial No. 82.

Dated Cochin, the 28rd May 1922.

From—The Honorary Secretary, Cochin Chamber of Commerce,
To—The Secretary, Railway Board, Simla.

Revision of Railway Risk Notes.

Cochin
Chamber of
Commerce,
Cochin.

With reference to your No. 505-T-21 of 17th April I am directed to pass on to you the following resolution passed by my Chamber in General Meeting:—

"That in the opinion of this Chamber Railway Form "B" should be altered to provide for the admission of claims in the case of "Shortage of weight at destination" irrespective of whether this is due to the wilful neglect of the Railway Administration or the theft by or wilful neglect of its servants, agents, etc., also, that in the case of packages damaged by rain water in course of transit or while in the custody of the Railway, the Railway Company shall be held responsible for such damage, irrespective of whether this is due to the wilful neglect of the Railway Administration or its servants, etc."

Serial No. 83.

No. 175, dated Delhi, the 30th May 1922.

From—The Secretary, Punjab Chamber of Commerce, Delhi,
To—The Assistant Secretary to the Government of India, Railway Department
(Railway Board), Simla.

SUBJECT:—*Committee for the revision of Railway Risk Notes.*

Punjab
Chamber of
Commerce,
Delhi.

With reference to your letter No. 505-T-21 of the 22nd May 1922, I am directed to inform you that the Managing Committee of this Chamber is of opinion that:—

- (a) Owing to the impossibility of consignors having access to the information which decides the onus of proof this Chamber is of opinion that the modification of Railway Risk Note Forms "B" and "H" should be such that the onus of proof should be with the Railway Administrations concerned.
- (b) Risk Note forms should be so worded that when Railway Administrations are unable to disprove their liability for loss, destruction

or deterioration of consignments entrusted to them they should be liable for compensation.

- (c) Railway Administrations which at present, within the knowledge of this Chamber, consistently discourage booking under Railway Risk, be forced to accept sound parcels consigned at Railway Risk.

Dated Tuticorin, the 27th May 1922.

Serial No. 84.

From—The Secretary, Chamber of Commerce, Tuticorin,

To—The Assistant Secretary, Railway Board, Simla.

In reply to your letter No. 505-T-21 of 22nd instant, I am directed to state that my Chamber has no remarks to make on the subject of reference before the Committee.

No. 825-34 of 1922, dated Bombay, the 31st May 1922.

Serial No. 85.

From—The Secretary to the Chamber of Commerce,

To—The Assistant Secretary, Railway Board, Simla.

I am directed to acknowledge receipt of your letter No. 505-T-21, dated the 15th April 1922, advising this Chamber of the appointment of a Committee to consider the question of the revision of railway risk notes and inviting an expression of the Chamber's views with regard to the form, construction and application in practice of the risk notes in use at present.

2. My Committee observe that their particular attention is invited to the two main points at issue summarised in paragraph 4 (i) and (ii) of your letter and with regard thereto I am to state that it is almost universally accepted by the trading community that, in the case of a claim for compensation arising out of the loss of goods entrusted to a railway administration for carriage, the onus of proof is upon the consignor. My Committee, however, consider that the legal aspect of this very controversial question does not altogether bear out this generally accepted view of the case and, in support of their contention in that connection, I am to cite Sections 151, 152 and 161 of the Indian Contract Act IX of 1872, which in accordance with the provisions of Section 72 of the Indian Railway Act IX of 1890, prescribed the responsibility of a railway administration in such circumstances:—

“Section 151.—In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.”

“Section 152.—The bailee, in the absence of any special contract, is not responsible for his loss, destruction or deterioration, of the thing bailed if he has taken the amount of care of it described in Section 151.”

“Section 161.—If, by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailer for any loss, destruction or deterioration of the goods from that time.”

3. Having regard to the foregoing considerations, I am to state that my Committee are of opinion that it is logical to contend that the onus of proof in the first instance is upon the bailer to show that the goods were despatched in an undamaged condition, and that such onus is subsequently transferred to the bailee to show that he exercised the proper care required by the provisions of Section 151. Once a railway receipt has been granted without any remarks that fact alone is a proof that the goods have been tendered in the required condition, and, therefore, the onus of proof that it is otherwise should lie with the

railway administration. Accordingly my Committee consider that, in the light of the Sections above quoted, it is neither legal nor equitable for the railway administrations to take up the attitude that they generally do with regard to railway risk notes.

4. If, however, the Railway Risk Note Revision Committee take the view that they are unable to accept my Committee's contention I am to point out that, in the opinion of my Committee, it is only right and just that the carrier should assume the responsibility of the burden of proof, for—in the nature of things—it is virtually impossible for the consignor to be in a position legally to prove wilful neglect on the part of the administration.

5. Accordingly my Committee are of opinion that Risk Notes B and H should be altered and the whole of the end of the notes from the words..... "due either to the wilful neglect... accident" should be deleted and the notes be modified to read—"except for the loss, from any cause whatever of a complete consignment or of one or more complete packages forming part of a consignment."

Serial No. 86.

No. 505-T-21, dated Madras, the 29th May 1922.

From—The Chairman, Madras Trades Association,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

SUBJECT :—*Railway Risk Notes.*

Madras
Trades
Association,
Madras.

With reference to your letter No. 505-T-21, dated Simla, the 15th-17th April 1922, regarding the above, I have the honour to inform you that the wording of the Railway Risk Notes B and H requires re-drafting, there being at present confusion of opinion as to the owners and railway risks. In the opinion of the Association, the railway company should be responsible for shortage as bailees of goods should be, and that the railway should not be allowed to shelter themselves behind the risk notes in order to claim immunity from liability to damage, evidently caused by the carelessness of their employees and that the railway risk notes should be more in the form of insurance bonds clearly stating the proportion of risk that the railway accepts for the transmission of these goods and the proportion of risk that the owners accept. Certainly greater care should be taken in the carrying of goods than has been done during the past few years.

Serial No. 87.

Dated Bombay, the 29th May 1922.

From—The President, Ghee Bazar Association, Bombay,

To—The President, Railway Risk Note Committee, Simla.

Ghee Bazar
Association,
Bombay.

I have read the text of the petition written to Your Honour regarding risk notes by the Secretary of the Piece-goods Association, Calcutta. I humbly beg to point out that my association also thoroughly corroborates with him.

My Association agrees with the Secretary of the Indian Piece-goods Association, Calcutta, when he says, that owing to a great difference between owners' risk rate and railway risk rate the trade of India has to suffer much. If merchants send goods on their risk and if the goods are lost or damaged, as it happens often merchants have to suffer much because railway companies don't give compensation. If merchants send goods on railway's risk, the rates are extremely high and they have no chance of profit at all. In this way merchants are not in a position to trade freely. These hamper the trade and the consequent prosperity of the country.

Again it has been stated in the Railway Rules that if goods are lost it is the merchant who has to prove the negligence of the railway company. This is a rule which frees the railway company from almost all responsibility and puts poor merchants in a very awkward position. The goods being in the custody of the railway company and they being in a state of transit from one station to another under the superintendence of the company's servants how may it be possible to prove negligence of railway authorities by merchants.

It is also true that many railway servants take advantage of the ignorance of the merchants and whether the tins of ghee or their covering be old or not prevail upon the merchants to sign railway risk note form A, thus making merchants incapable of claiming loss, damage, etc.

My Association therefore respectfully requests Your Honour that the difference between the owner's risk rate and the railway risk rate should be 5 to 10 per cent. and not more than that and that in the case of loss the railway company should prove that their staff was not negligent in taking proper care of the articles and that if it be found that although articles were properly packed but railway servants purposely made the merchants sign risk note form A, against the merchants' wish that railway servants should be legally proceeded against and be punished.

Hoping that these and other just complaints against the present railway risk notes be favourably considered.

No. 1228—F. IX-6, dated Agra, the 1st June 1922.

Serial No. 88.

From—The Honorary Secretary, The Agra Trade Association,

To—The Chairman, Risk Note Committee, Government of India, Simla.

In submitting the enclosed representation I am directed to state that in the opinion of this Association it is considered most advisable that these risk notes should be abolished altogether, since the same have been the source of so much mischief, whereby the traders have been put to heavy and serious losses and the trade itself has been very much weakened.

**Agra Trade-
Association,
Agra.**

Dated Agra, the 1st June 1922.

From—The Honorary Secretary, The Agra Trade Association,

To—The Chairman, Risk Note Committee, Government of India, Simla.

After all it is a matter of great pleasure that the various risk notes have been handed over for revision to this committee. The greatest amount of hardship which is being experienced by the trading public on account of the risk notes is a matter not unknown to this committee. This is further increased by the fact that the various High Courts have put an interpretation upon some risk notes which have placed such a burden on the shoulders of the plaintiff that it is impossible for him to discharge. It is a fact also worth paying attention that the railways have also begun to make an abuse of the risk notes. Instances are not wanting to show that the risk notes have been taken when there was no reduced rate charged and even on those consignments when no alternative rates are quoted, risk notes are taken almost in each and every case. Practically no consignment is booked without risk note form A on some pretext or another. If a member of the committee will take the trouble of going over to Calcutta and seeing the kind of bagging which is used in rice and sugar bags he will be fully satisfied that the bags are entirely new yet in almost all the consignments risk note A is held. The railway people refuse to book without the risk note. The account books of the merchants at Calcutta will also bear testimony to the fact that the bagging was new in all these cases and yet risk note was taken. Sometimes the bagging is entered as old and torn and sometimes it is entered as "weak at seams" and sometimes insecurely packed.

Not only this, as a matter of fact the railways have gone so far as to make rules prohibiting the despatch of goods unless risk notes are signed. If you will be pleased to look to the rules framed by the Great Indian Peninsula Railway you will find the above borne out. This is entirely illegal.

Then above all, the other important point which is necessary to be brought to the notice of this committee is that in England the liability of the railway companies is that of an insurer while here in India the Legislature has made them only bailees. This was excusable at a time when the railway companies were at loss or their earnings were not sufficiently attractive, but now when the earnings are so huge there is no reason why there should be any difference in the liability of railways in England and India. This may appear to be a digression at the first sight so far as this committee is concerned but the committee has been addressed on this point at this stage because it will have to consider this point when considering the conditions given below on which alone risk notes should be allowed to be taken.

(I) It should be made clear by Legislature that the execution of any risk notes of any form would not affect the provisions of Section 76 of the Railway Act. This is only fair. The general law as embodied in Section 106 of the Evidence Act is that when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him. Section 76 of the Railway Act is nothing but practically a reproduction of that law in the Railway Act. This is in accordance with commonsense also. By requiring the other party to prove otherwise is to ask him to perform an unimpossible task. You cannot imagine that the consignor or consignee would be attached to the goods and thus would be in a position to prove where the guard was sleeping or was away from his duty or where the train stopped and so forth. When Section 76 of the Railway Act was enacted, it cannot be imagined that it was ever the intention of the Legislature that this law would apply only when no risk note is executed. If it had been like that we would have found it clearly laid down in the section "except when risk note is executed."

But now as the High Courts have put this interpretation upon Section 76 that it applies only in the absence of any risk note it is absolutely necessary that the Legislature should come to the rescue of the traders and should make it perfectly clear that Section 76 of the Railway Act would apply whether any risk note is executed or not.

Risk Note A.—The railway are simply abusing this form. Some railways are taking this risk note on the plea that the bagging is "old and torn" or "weak at seams" though as a matter of fact the bagging may be entirely new; while other railways are taking it by framing a bye-law and prohibiting the despatch of goods unless risk note A is executed, on some such pretext as "not demurred" or liable to be wet by rain, etc. Specially after 1st June you will not find any consignment booked on the Great Indian Peninsula Railway without a risk note. This is entirely illegal. You cannot expect that the traders would be putting a demur in each and every bag or that some special kind of bags would be manufactured for the Great Indian Peninsula Railway. The poor merchants do not even know what is written on the railway receipt and we find that the staff has written "bagging old and worn," "contents leaking," "weak at seams," and some similar words, though the bagging was entirely new, and then the goods are pilfered in transit to such an extent that out of 2½ maunds in the bag sometimes 10 seers, sometimes 20 seers only are left, and the railway company takes the protection of the risk note A though the bag may appear to have been cut in the transit. When the merchant goes to take delivery and wants to give a remark in the delivery book the railway people won't allow it to be done and under some rulings he cannot force the railway to do it, and if delivery is taken, the railway people say that the loss was due to the bagging being old and torn while the merchant says that the bags were cut. Generally the railway staff is believed by the court as they are supported by the remarks in the railway receipt. In order to avoid all this it is suggested that risk note form A should entirely be abolished. However if it is thought desirable to retain it, then it should be enacted that the risk note would be void unless the fact of the bagging being old and torn appears in the hand-writing of the sender himself. No such words in the railway receipt or in the forwarding note or risk note would protect the railway or would be any evidence at all of the bagging being defective. Then it should be allowed when the bagging is really torn and no railway should be allowed to frame any bye-law on this point.

Risk Note B and H.—These risk notes are the source of the present trouble and fraud. The railway staff knowing full well that the railway is not responsible in such cases has begun to commit mischief with respect to consignments booked under risk notes B and H to an unbearable degree. They are further encouraged by the interpretation which has been put by the various High Courts in India on these risk notes. The interpretation which is put loses sight of Section 106 of the Evidence Act. The present interpretation disregards Section 106 of the Evidence Act as if it does not exist in the Act and the consignor or consignee is asked to perjure himself and to undertake to perform an impossibility. The language is also to some extent inconsistent with the Act itself. Section 72 of the Railway Act provides that the railway company may limit their liability by a special contract and not that it may exonerate itself from liability. The present form exempts the company in all cases excepting those which are enumerated in the risk note. The form should be that the railway would be liable in all cases excepting certain circumstances which may exonerate

the railway. The form should be entirely reversed. That is to say, the exemptions should be the exceptions and not the rule, while under the present risk note the exemptions form the rule and the liability the exception.

Further the risk note should afford protection only so far as the safety of the goods is concerned and should afford no protection when the goods are delivered late or are damaged by the rain or otherwise in transit.

The words "except for the loss of complete consignment" should be entirely struck off as they open a gate to fraud and robbery by the railway staff. The different High Courts have ruled that there is no loss of a package even if the outer covering of the package is delivered to the consignee. Thus the cases are very very frequent where you will find the contents of the packages, (e.g., ghee tins, sugar bags, etc.), taken out in transit and practically only the outer covering being delivered at destination.

This risk note should be entirely recast and before it is approved should be published for the criticism of the public, if it is not found possible to abolish them altogether.

This risk note is to be used when the railway company has two rates in the tariff, one at railway risk, and the other at owner's risk, and the latter is charged. Here in India the railway companies are simply abusing this risk note. There is not sufficient margin in the two rates and yet risk note is taken. Instances are not wanting to prove that from the starting station the difference in the two rates is only about a pie or so and that too for a short distance and then for the whole distance the railway risk rate is charged and yet risk note is taken.

Thus it should be made clear by rules that the reduced rate at which risk note is taken must be at least 75 per cent. of the railway rate and it should be for the whole distance, i.e., from the sending station to the station of destination. If it is not for the whole distance then the risk note will protect the railway only for so much distance as is covered by the reduced rate and the railway company will have to prove that no loss occurred on the portion covered by the railway risk note.

In spite of the fact that there are rulings to the effect "that not locking the wagons" is wilful negligence, they have not taken any steps to lock the wagons. The railway should be asked to devise means to lock wagons at two places on each side of the wagon and there should be lights at a distance of about 100 feet. Thus this Association suggests that these risk notes if possible should be abolished and some mean rate of railway risk rate and owner's risk rate be fixed so as to avoid competition between those who import goods under owner's risk rate and railway risk rate.

In case it is thought desirable to retain it, the difference in rates must be abolished and some mean rate of railway risk rate and owner's risk rate be fixed would be liable for complete consignment or package or for loss due to delay or other negligent act, but in case a portion of a package is lost or destroyed, the railway will not be liable if they prove that they are not guilty of wilful negligence.

Risk Note X.—In cases of articles covered by Section 75 of the Railway Act it should be for the railway to ask the increased rate. If the sender refuses to pay increased charge, it should be taken in writing by him that he refused to pay the higher charge and the risk note should then be filled up.

Authority.—Risk notes should be accepted only when they are duly executed by the sender himself or by some person who has clear authority in writing to sign these forms.

No. T-505, dated Bombay, the 2nd June 1922.

Serial No. 69.

From—J. K. MEHTA, Esq., M.A., Secretary, The Indian Merchants' Chamber and Bureau, Bombay,

To—The Assistant Secretary to the Government of India, Railway Department (Railway Board), Simla.

I am directed to acknowledge the receipt of your letter dated the 17th April 1922, No. 505-T-21, and in reply to send the following views of my Committee on the subject referred to.

Indian Merchants' Chamber and Bureau, Bombay.

2. My Committee fear that the whole trouble with regard to "Railway Risk" Notes and the many inconveniences and harassments merchants have to suffer therefrom, besides the bitterness aroused between Railway Administration and the mercantile community are in no small measure due to the existing differentiation between the two rates for the carriage of goods, *viz.*, "the Owner's Risk" rate and the "Railway Risk" rate. "The Owner's Risk" rate being much lower than "The Railway Risk" rate, consignors are naturally tempted to book their goods at the lower rate, and the Railway Companies on their part also are extremely reluctant to accept consignments at their risk. The result is, paradoxical as it may appear, that both the consignors and Railway Companies prefer the "Owner's Risk" rate, the Companies in order to safeguard their own interests, getting the consignors to exempt them from liability under certain circumstances.

3. The responsibility of Railways as public carriers is at present limited first by the Indian Contract Act in India and then by the Indian Railway Act IX of 1890. Under the Indian Contract Act the Railway is bound to take as much care of the goods entrusted to its charge as a man of ordinary prudence would take of his own goods, but this liability is further limited by the Railway Act, section 72, wherein it is provided that by an agreement on form approved by the Governor-General in Council the Railway Company can reduce its responsibility under the Act.

4. The consignors are made to sign "Risk Note" Forms for one reason or the other, and the practical exemption from all liability that the Railway Companies enjoy leads to extremely undesirable results like the following :—

- (a) Grave inducement to the railway staff to be dishonest;
- (b) Heavy losses to consignors;
- (c) Litigation between Railway Companies and consignors;
- (d) Waste of public money through the staff and forwarding agents, colluding as is often alleged, in committing frauds on the Railway Company in the matter of claims;
- (e) Utter indifference of the Railway authorities to the grievances of the mercantile community.

5. The real remedy, therefore, lies, my Committee feel, in having one rate only, *viz.*, the "Railway Risk" rate; in fixing it at the present level of the "Owner's Risk" rate; and in eliminating defects in the "Railway Risk" Note Forms, which have made them such a hardship to the mercantile community and which have been so prolific of all kinds of theft and dishonesty. The "Railway Risk" rate has been recently enhanced and my Committee fail to see any reason why the Companies should not accept consignments at this enhanced rate at *their* risk.

6. It is, my Committee submit, pertinent to enquire in this connection as to (a) what the amount of claims was in respect of consignments under "Owner's Risk"; (b) what was the amount of claims entertained and paid by the Railway Companies in such cases; (c) what was the total amount of claims with regard to consignments under "Railway Risk"; (d) what was the amount of claims entertained and paid by the Railway Companies in such cases during the last quinquennium. Such an enquiry will, my Committee think, throw considerable light on the whole question.

7. My Committee are unable also to understand why such a large number of thefts and pilferages should at all be possible in consignments assigned for carriage to Railway Companies, looking to such preventive appliances as the existence of yards with railings, railway police, and a big staff, etc. Nor can my Committee appreciate any reasons for the Railway Companies fixing the "Railway Risk" rate at a much higher figure than the "Owner's Risk" rate, considering that no extra precautions are taken by them for such consignments and no extra cost, therefore, incurred by them in their carriage.

8. My Committee believe that if their suggestion is carried out pilferage and thefts will almost disappear, for the present carelessness and indifference of the Railway Administrations and the consequent dishonesty of their Staff will be very largely removed. In short it may be emphasized that if your Committee are really desirous of removing the grievances of the mercantile community nothing short of the remedy suggested here will suffice or prove effective.

9. With regard to defective packing my Committee beg to suggest that the Railway Companies should be authorized to refuse to book consignments defectively packed, unless the consignor remedies such defects or signs a risk note absolving companies from liability for damage, etc., on the ground of such packing. It may be mentioned that in Germany, as far as my Committee are aware, the double rate does not exist and the German Railways do take the risk in regard to loss, diminution in bulk, or damage to consignments while under their charge. They have, however, safeguarded themselves from liability in the case of defective packing of several types. If the double rate is dispensed with in this country and a single railway risk rate substituted in its place the interests of Railway Companies could be similarly safeguarded. Care must be taken, however, to see that the evils of the existing Railway Risk Notes are not perpetuated in the future. My Committee beg to suggest accordingly several changes in the existing risk notes in order that the new risk notes, whatever may be their form, might be free from those extremely onerous, harmful and injurious defects.

10. *Railway Risk Note Form A.*—This form is used when articles are tendered for carriage which are either already in a bad condition or are so defectively packed as to be liable to leakage, wastage, or damage in transit. The concluding lines of this form are, "harmless and free from all responsibility for the conditions in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same." These words are ambiguous and render the Railway Companies free from their responsibility even in the case of an empty tare being delivered to the consignee after all its contents have been lost or removed. This ambiguity must be removed and my Committee are of opinion that the following change must be made in the words of the concluding sentence. The words "for the condition in which the aforesaid goods may be delivered to the consignee at destination" should be deleted altogether and the words "aforesaid condition" should be substituted for the last word "same."

11. *Risk Note Form C.*—This form is used when at sender's request open wagons, carts, or boats are used for the conveyance of goods liable to damages when so carried and which under other circumstances would be carried in covered wagons, carts, or boats. The wording of this form is also ambiguous and is responsible for the conflicting constructions placed upon it by the various courts. Some courts have expressed their opinion that the Railway Companies are not responsible even though they may not have covered wagons with tarpaulins while others have expressed a contrary opinion. The remedy for this lies, my Committee would suggest in adding the following words at the end of the form "provided the Railway Companies prove that they have taken as much care of the goods as a bailee is required to do under the Indian Contract Act."

12. *Risk Note Form B.*—The wording of the "B" Form is also extremely ambiguous and has been taken advantage of by the Railway Companies to evade the responsibility in respect of claims made against them for loss to the consignment. Without prejudice to the main recommendation of my Committee made in paragraph 5 regarding the abolition of the double rate they beg to suggest the following changes in the existing Risk Note Form "B", should the Railway Companies choose to offer special reduced rates in certain cases :—

- (a) The words 'due either to the wilful neglect of the Railway Administration or to thefts by or the wilful neglect of its servants, transport agents, carriers employed by them before, during and after transit over the said railway or other railway lines working

in connection therewith or by any other transport agency or agencies employed by them respectively for the carriage of the whole or any part of the said consignment" should be inserted after the words "from any cause whatever." Such a change will enable the liability to be fixed upon the Railway Company for the loss of a complete consignment or of one or more complete packages which it is impossible to do now. As matters stand at present the Railway Companies are not held responsible for such loss unless the wilful neglect or theft of their servants is proved by the consignor. Even until recently a Railway Company had simply to admit loss to be free from all responsibility. In this connection my Committee would like to invite the attention of your Committee to a recent judgment delivered by the Bombay High Court in the case of the Central India Spinning, Weaving and Manufacturing Company against the Great Indian Peninsula Railway Company. During the course of the judgment in the case referred to above the learned judge remarked "Whatever the terms of the Risk Note, whatever the nature of the booking whether at the owner's risk or otherwise it is incumbent upon the carrier companies *pro bono publico* to offer some explanation of the loss and duly to assist the aggrieved party."

- (b) The word "after" occurring in the phrase "before, during and after transit" should be deleted as the Railway Companies cannot surely urge any exemption from liability after the goods have arrived at their destination.
- (c) The words "Robbery from a running train" should be defined much more exactly as it had been found that the Railway Companies resort to this excuse even in the case of thefts.
- (d) With regard to the exception of fire it will be found from a copy of the statement of some respectable merchants attached herewith that the Railway Companies show extreme carelessness and indifference with regard to consignments which may have caught fire. In order to prevent this it should be made clear that exemption from liability will only be given to them if they prove that they took all possible care to rescue the goods from the fire.

13. A similar change as mentioned above should be made in the Risk Note Form H.

14. *Amendment of Section 140 of the Railway Act.*—Under this section the words "Railway Administration" are not very clearly defined. The amendment must be to the effect that a notice addressed by a merchant to any responsible officer of the railway must be deemed to be sufficient notice, under Section 140 of the Act. Merchants are often driven from pillar to post in addressing complaints to the Railway officials and it does not infrequently happen that their suit is dismissed in a court of law on the technical ground that they did not address the proper official. Such a state of things should be remedied at once, and my Committee suggest that besides the Agent of the Railway Company, the General Traffic Manager, the Deputy Traffic Manager, the Traffic Superintendent and the Goods Superintendent, and such other responsible officers must be considered as officers to whom merchants can address their notice for compensation or for claims, so as to render a notice so addressed valid and in conformity with the requirements that it must be addressed to the "Railway Administration."

Serial No. 90.

No. 185, dated Calcutta, the 2nd June 1922.

From—The Honorary Secretary, Bengal National Chamber of Commerce,

To—The Secretary to the Government of India, Railway Department (Railway Board), Simla.

Bengal
National
Chamber of
Commerce,
Calcutta.

I have the honour to acknowledge receipt of your letter No. 505-T.-21, dated the 1st April 1922, inviting an expression of opinion of the Bengal National Chamber of Commerce on the proposal of revision of Railway Risk

Notes and in reply beg to state that I have been instructed by the Committee of the Chamber to submit the following observations :—

- (1) My Committee are of opinion that the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration for carriage is contrary to all accepted principles of law and justice and therefore requires modification. Risk Note Form B and H absolves the Railway from all responsibility for damage except in the case of loss of a complete package or a consignment due—
 - (a) either to the wilful neglect of the Railway Administration.
 - (b) or to the wilful neglect or theft by Railway servants. In many cases the goods remain in the hands of the Railways for days or even for months together and it is not possible for the consignor to prove that damage was due either to the wilful neglect of Railway Administration or to wilful neglect or theft by the Railway servants. Under the circumstances the onus of proof should be placed upon the Railway Administration.

My Committee would also point out that the Railway Risk rates in India are unduly high and should be lowered.

- (2) My Committee are of opinion that the words loss, destruction or deterioration used in the Risk Note Forms should, in the interest of the public, be so altered or added to or defined in such a manner as to secure to the consignor the right of compensation for the loss of the whole or part of the consignment for the above arising from the wilful neglect or criminal acts of the servants of the Railway Administration.
- (3) My Committee beg, further, to point out that in case of running train robberies the Railway should be bound to prove that such robbery actually took place and in the case of fire the Railway should likewise prove that the fire broke out in spite of necessary precautions taken.

No. G.-51-358, dated Cocanada, the 6th June 1922.

Serial No. 91.

From—The Secretary, Chamber of Commerce, Cocanada,

To—The Secretary, Railway Board, Government of India, Simla.

Railway Risk Notes.

With reference to your No. 505 T-21, dated 15th-17th April 1922, I have the honour to inform you that the subject of your letter has been fully considered by this Chamber, and that the following decision was come to at the meeting held this day, which is herewith communicated to you.

“ The Committee are unanimously of opinion that it is inequitable that the onus of proof of damage and losses should be thrown upon the consignor. The Railways must accept responsibility for correct delivery of goods forwarded in good condition. Risk Form ‘ A ’ can be used when goods are forwarded in bad condition or defectively packed. ”

Dated Bombay, the 7th June 1922.

Serial No. 92.

From—The Secretary, The Grain Merchants' Association,

To—The Secretary, Railway Board, Simla.

I have been directed by my Managing Committee to acknowledge receipt of your letter No. 505-T.-21 of the 27th April 1922, inviting opinion on the revision of the railway risk note forms, and forward herewith the opinion of my Association together with four copies of the same.

Chamber of
Commerce
Cocanada.

Grain
Merchants'
Association,
Bombay.

Opinion of the Grain Merchants' Association, Bombay, regarding Risk Notes.

The Grain Merchants' Association are greatly interested in the question of risk notes as grain and seed of all sorts is mostly booked under one or the other risk notes. Of late the experience of this trade has been that risk notes are obtained more and more frequently and without sufficient reason and claims repudiated on the most flimsy grounds. We will consider the various risk notes with which this trade is concerned, *viz.*, "A," "B," "C" and "H" in details below :—

Risk Note A.—This risk note is obtained for such vague reasons as "Liable to wet," "Liable to dryage," "Single bagging," "Sewing defective," "Loosely packed," etc. Sending stations can at their sweet will bring the goods under any of these headings and refuse to book at railway risk, goods which are not defectively packed nor in bad condition as is required by the Risk Note "A." In many instances it has been proved even to the entire satisfaction of the railway authorities that the risk note was unjustly obtained although the packing of such goods was entirely sound and the condition of the same was good. In spite of repeated instances and proofs the railway authorities have never taken any strict steps to stop such practice of obtaining risk notes unjustly.

The railway authorities are also at present sole judges to decide the question of packing, etc., and at almost all up-country stations sound and good packing is said to be unsound and defective which in Bombay (destination) has been proved and held to be sound. Apart from this nearly every consignment at present is pilfered (as has also been found by the late Railway Police Committee). Yet the claims are always repudiated for the loss caused by that pilferage under the pretext of risk note "A."

At present almost every consignment, booked either at railway risk or owner's risk, "A," is delivered to the merchant in an unsound state. A few bags are always delivered in a slack condition (which is generally due to theft) and if the consignment is at railway risk the claim for slackage is paid and if it is at owner's risk "A," the claim is repudiated. From the accompanying vouchers it will be seen that bags booked containing about 2 maunds and 30 seers or 2 maunds and 20 seers are at destination found containing only one maund or 1 maund and 20 seers, etc., *i.e.*, either half or little more than that is delivered short. In one case a consignment of 67 bags was booked from Poona to Wadi Bunder Invoice No. 68 of 4th October 1919. At Wadi Bunder 4 bags were found slack and only weighed 15 seers, 20 seers, 25 seers, 1 maund, total 2 maunds and 20 seers, against 10 maunds and 32 seers the invoiced weight, *i.e.*, 8 maunds and 12 seers were found short only in four bags. There were no sweepings found and the railway company's attention was drawn to all these facts, yet, the usual reply of risk note "A" being held was given.

All the consignments booked under the accompanying vouchers have been booked from the local Great Indian Peninsula stations and there has been no change of wagons *en route*. The floors of nearly all these wagons are of iron and there is no likelihood whatsoever of grain dropping through.

While unloading these wagons at Wadi Bunder no sweepings are often found in the wagon although one or two bags are found slack in it, which clearly proves the theft of the contents. In some cases sweepings are found in the wagon but the same are not delivered to the merchants but are collected by the railway company, and are sold by monthly auctions and thus thousands of rupees are realised by the railway company from these sweepings which rightfully belong to merchants.

As stated above the company pays claims if the consignment is booked at railway risk and repudiates when the same is at owner's risk "A."

The consignments accepted at railway risk are securely and soundly packed and the cause of slackage is pilferage.

It is therefore a surprise that all consignments booked at railway risk are only pilfered but not a single consignment out of thousands booked at owner's risk "A" is pilfered, for never has the railway company paid claims for such and have always stated that as risk note "A" is held for insecure packing the railway is free from all responsibility, *i.e.*, the railway always contends that in all cases the loss in owner's risk consignments is due to the reasons

stated in the risk note form "A," in spite of the above clear proofs of pilferage, as otherwise the company is liable for the loss caused by the theft.

The cause of the slack bags received in consignments booked at railway risk is pilferage as is admitted.

Consignments booked at owner's risk "A" loaded in direct iron floored sound wagons (from which not a single grain would drop out) from which no sweepings are found at the destination although half or even greater portion of a bag is found missing, surely points out the cause as theft and not to the defective packing.

Even supposing the bag having defective packing was torn while loading or unloading in that case sweepings would be found either in wagons or at the unloading place and to that the merchant is entitled.

In such cases sweepings ought to have been given to the merchant or in absence of sweepings his claim ought to have been paid but it ought not to be the case that the Railway Company swallows sweepings worth thousand of rupees and not also pay the claims as at present.

These defects of the risk note "A" therefore should be modified.

At present the lower staff to shirk off all responsibilities obtain risk notes unjustly so that where care and precautions are necessary the same are not taken and neither they nor the railway company have to suffer for it.

To remedy this, this Association suggests that in cases where owner's risk "A" has been obtained if it is proved at destination or anywhere that the goods being in sound and good condition and being well packed no risk note under form "A" ought to have been obtained, the railway company should pay the costs incurred for such proofs and the sending station should be departmentally taken to task for obtaining owner's risk "A" unjustly.

This would minimise the complaint of unjust obtaining of risk note form "A."

Together with the above modification this Association suggests that the present vague wording of last paragraph in the form that is "station to station harmless and free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same" should be modified as follows:—The underlined words from "for the condition in which the aforesaid goods may be delivered to the consignee at destination" should be omitted and instead of the last word "same" "aforesaid condition" should be substituted.

By the present vague wording always difference of opinion arises.

Legal opinion including that of the judges of the Small Causes Court, Bombay, differs on this point. Some contend that the railway company is indemnified for all losses to the consignment. Others contend that the railway company is indemnified except for all loss due to the condition stated previously. It is obvious the latter is the correct interpretation and this Association suggests *by this change in the wording to make the same clear.*

Risk Note form "B" and "H."—The wordings for the above risk notes are very vague and wide. In the consignments booked under the above risk notes whole packages (not to speak of partial loss) which sometimes number 15 or 20 or even more are short delivered and the claims for the loss of such complete packages are repudiated under pretext of their having been lost by running train robbery. The present definition of the word robbery is very widely made by Courts of Law as well as by the railway authorities. In hundreds of cases, tried by courts, no evidence has been brought to show that any violence or force was used.

The only evidence produced is that at a certain junction the guard found the seals and wagons intact and at the next station or junction the same were found broken and goods removed. No persons were even seen by the guard or brakemen doing this. Yet this is admitted as robbery and claim is disallowed. This Association does not think that the object of the legislature sanctioning these risk notes was to absolve railway company from responsibility from such simple thefts.

It should be borne in mind that wagons of goods trains are not fitted up with handles, etc., to facilitate climbing on to the wagon and while the train is in

motion it is next to impossible to board any such wagon. Again, it is also very hard to remove big bales of cotton or piece-goods from the wagon undetected yet in no case has it been found that violence was used or even threatened.

The word robbery therefore is very badly abused at present and is not taken in its strict sense.

The railway is also free from responsibility for loss caused by fire which may even be due to the negligence of the railway company.

On account of such negligence the merchants have to insure their goods while in transit.

It should therefore be provided in the risk notes " B " and " H " that loss caused through fire on account of the negligence of the railway company should be borne by them. This is for the loss of complete packages.

As regards the partial loss or damages caused by rain or any other reason the railway company is free at present from all responsibility although the same may be due to any wilful negligence or even pilferage by railway servants.

This is surely very encouraging to the railway servants.

The most surprising thing for these risk notes is that the commodities for which reduced or the owner's risk rates are quoted are sometimes equal or even more than the rates for like commodities booked at railway risk.

For instance, if grain (wheat, gram, moong, etc.), and seeds are booked from Howrah to Bombay *via* Manikpur and Katni at railway risk the rate charged is Rs. 1-3-4 per maund while rice booked at owner's risk is charged the same rate, *i.e.* Rs. 1-3-4 and if booked at railway risk the rate is Rs. 1-8-3.

Again, if grain and seeds (including even cotton-seed) are booked at railway risk from Latur to Wadi Bunder *via* Kurdu Wadi the rate charged is Rs. 0-11-9 per maund while groundnut-seed when booked at owner's risk the rate is Rs. 0-13-6 and at railway risk Rs. 1-3-7.

What concession is then given? How are rice or groundnut-seed any superior or different from rest of the grain and seeds that the same when booked at owner's risk are charged at rates equal to or higher than the railway risk rates of other like commodities.

Can this be called concession?

The wording of these risk notes is very ambiguous and wide as already stated above.

On account of these wordings till recently it was held by Judges of the different Courts that the railway company merely admitting the loss of complete packages is absolved from all responsibilities and that it was not necessary for the railway company to prove even the loss, as will be seen from the copy of a judgment in Civil Application No. 92 of 1920 under Extraordinary Jurisdiction of the Bombay High Court.

By such decision the railway companies were always admitting the loss contending the same to be due to running train robbery even though the packages may not have actually been lost (the same might be cross-delivered or transmitted to a different station than booked to).

The burden of proof was on the merchants to prove the non-existence of the loss, negligence, etc., and it being impossible for the merchant to do so the railway companies always won.

This encouraged the railway companies to lay down a principle to reply in each and every consignment that the loss being due to running train robbery, the railway was not liable.

About four years back when thousands of wagons were booked from Calcutta to Wadi Bunder of rice the railway company had freely taken advantage of the favourable decision and had repudiated claims for 20 to 25 or even complete bags not delivered in one consignment.

By the efforts of this Association a case referred to above for only two bags short delivered was fought out to the bitter end and the same was taken before Bombay High Court Full Bench and it was held that mere admission of loss

by railway company was not sufficient and that it ought to have proved the loss. This has very much favoured the merchants and in many cases the negligence is proved through the witnesses of the railway company brought to prove the loss and the merchants were paid their claims.

In cases of parcels of fresh fruits which have always been found that the contents are found missing and yet in no case the claim for such loss is paid.

The wording being ambiguous there is likelihood of different interpretation being placed on the words. This Association suggests that the present risk notes should be altogether abolished or the wording of these risk notes should be amended or the owner's risk rates should be so kept as to give concession to the sender and that there would be no chance of different interpretation and that the railway should be held responsible for the loss of complete packages due to any cause whatsoever.

If the risk notes are worded as below this Association thinks the purpose will be served.

RISK NOTE FORM " B. "

" Whereas the consignment of _____

from any cause whatever except for the loss of a complete consignment or one or more complete packages forming part of a consignment " and provided that any other loss, destruction, deterioration, or damage, etc., is proved not to have been due either to the wilful neglect of the railway administration or to theft by or the wilful neglect of its servants. Transport agents or carriers employed by them before, during and after transit over the said railway or other railway lines working in connection therewith or by any other transport agency or agencies, employed by them respectively for the carriage of the whole or any part of the said consignment : provided the term " wilful neglect " be not held to include fire if the said fire is proved to have taken place in spite of all precautions taken by the company to prevent fire to minimise loss after such fire took place, robbery from a running train or any other unforeseen event or accident.

This Association further suggests that the words " before " and " after " occurring in the fifth line from the bottom of the present risk note " B " should be deleted altogether.

Risk Note Form " C. "—The railway company being unable to provide sufficient covered wagons " C " form is used.

It is more for the convenience of the railway company than the merchants that open wagons are used and for the incapacity of the railway company to provide covered wagons merchants are penalised.

This Association therefore suggests that the same form should be altogether abolished.

If this is however considered impossible the following amendments should be made in the present wording of the " C " form.

In Suit No. 789-10525 of 1920 before the Chief Judge of the Small Causes Court, Bombay it was proved that open wagons used after execution of form " C " were properly covered.

On the line goods were pilfered and at such times the tarpaulins used were torn and the goods were exposed to rain and the same were badly damaged.

The trying Judge held that the railway company were not responsible for the damages as they had taken proper care to cover the wagons but it was not the railway company's fault if the tarpaulins were torn.

This should be remedied by providing in the railway risk note "C" so that when such coverings are found torn while the consignment is in transit the railway company should take steps to cover the same properly at once and in default the same should be liable for loss or damages caused.

In addition to this modification following words should be added to the present wording of the risk note form "C" viz., "provided the railway company, proves that they have taken proper care of the goods as to its covering."

Statement of various consignments booked at Owners' Risk Form "A" from Great Indian Peninsula Local Stations to Wadi Bunder.

Serial number.	From	To	Invoice number	Date.	Number bags consigned.	Number.	Slack bags and their weight.		Weight of full bags.		Weight found short.	
							Mds.	Seers.	Mds.	Seers.	Mds.	Seers.
1	Kherwadi...	Wadi Bunder	105	13th July 1919	156	11	14	0	30	10	16	10
2	Nasik ...	do. ...	11	1st October 1921	220	1	1	10	2	21	1	10
3	Naydongri	do. ..	1	30th October 1921.	21	2	2	10	5	10	3	0
4	Dhulia ...	do. ...	54	7th October 1921	71	4	5	0	10	12	5	12
5	Lasalgaon ..	do. ...	119	25th October 1921.	41	1	1	0	2	32	1	32
6	Naydongri	do. ...	27	12th November 1921.	140	1	1	0	2	3	1	3
7	Lasalgaon	do. ...	329	14th November 1921.	35	1	1	10	2	33	1	28
8	Deolali ...	do. ...	119	15th November 1921.	69	1	1	16	2	36	1	20
9	Chalisgaon	do. ...	314	13th December 1921.	30	1	1	25	3	0	1	15
10	Deolali ...	do. ...	241	1st January 1922.	29	1	1	20	2	32	1	12
11	Chalisgaon	do. ...	383	4th January 1922.	7	1	1	10	2	30	1	20
12	Deolali ...	do. ...	332	20th February 1922.	41	1	0	39	2	10	1	11

Serial No. 93.

Letter No. 517-13, dated Bombay, the 16th June 1922.

From—The Secretary, Millowners' Association, Bombay,

To—T. V. SHESHAGIRI AYYAR, Esq., M.L.A., Chairman, The Railway Risk Note Revision Committee, Simla.

Millowners' Association, Bombay.

On behalf of my Committee I am directed to take the liberty of addressing you, as Chairman of the Railway Risk Note Revision Committee, on the subject of Risk Notes; a matter which is of great importance to the members of this Association although their opinion has not been specifically invited in connection with the terms of reference to your Committee.

2. During the year 1921, the Bombay Mills, either direct or through their Agents or Merchants, exported by rail 3,23,960 bales of piecegoods, and 1,65,124 bales of yarn. The Mills also imported thousands of bales of cotton direct from up-country markets. These figures will give an idea of the

enormous income derived by the different railway administrations from the Millowners of Bombay. Accordingly it will be realised that thefts which occur on the Railways from these consignments, and for which compensation is not paid by the administrations under one pretext or another, are a source of heavy loss to the Industry.

3. It has been the experience of the majority of the members of this Association that thefts and petty pilferages on the Railways have been on the increase, and my Committee are inclined to attribute this increase to the one-sided and arbitrary clause in the Owners' Risk Form which absolves the Railways from liabilities even when complete bales are lost. It cannot be denied that Railway servants have ready access to the goods, especially when the train is stopping in goods' yards for loading and unloading purposes and also when stopping at different sidings. The presumption, therefore, is very strong, when thefts are of frequent occurrence, that such thefts were committed either by the Railway servants themselves, or by outsiders with the help and connivance of the Railway servants.

4. My Committee, of course, do not deny that outside thieves are also sometimes able to get into a wagon when the train is in motion and commit pilferages, but such thefts would be confined mostly to small articles and seldom, if at all, would they consist of heavy bales of piecegoods or yarn or cotton with which articles this Association is solely concerned. It is, my Committee submit, a natural inference to assume that, when Railways carrying the goods are so fully protected, not against mere damage to goods but against loss of complete packages, they do not exercise that supervision over their own servants with a view to prevent thefts, which they would have done had they been obliged to grant compensation in most cases. The Railways, as common carriers, are bound, under the Indian Contract Act, to take every reasonable precaution so that goods entrusted to them may not be lost in transit. But when this liability is so narrowed down, by the Risk Notes, that the Railways are practically made immune from any liability, then there is hardly any inducement at all for the management to take even ordinary precautions.

5. Moreover, owing to the great difference between the rates for goods despatched at Railway Risk and at Owners' Risk, respectively, exporters are obliged to despatch goods mostly at Owners' Risk. The consignor has no option but to sign the Risk Note in order to be able to send his goods at a reasonable rate. It may be contended that the Risk Notes Forms B and H, which apply in the case of the members of this Association, do not absolve the Railways altogether for, in the case of complete packages, if the loss is due "either to the wilful neglect of the Railway Administration or to the theft by, or to the wilful neglect of its servants, etc.," the Railway concerned is liable. However, in practice, complete immunity is granted to the Railways, for owing to the wording of the Risk Notes, the onus of proving that the Railway had been negligent rests on the consignor—that view, at any rate, has invariably been taken by the Courts of law. The consignor, after having delivered the goods to the Railway Company, knows, however, absolutely nothing as to the manner in which the particular goods were carried. It is only the Railway over which the goods are transported that is in a position to say in what manner the goods were carried, how often and at what places the particular wagon was detained *en route*; what precautions were taken during such stoppages; between which stations the loss occurred; by which official the loss was detected; whether the loss was reported to the Police and with what result. All these facts are in the possession of the Railway alone and yet the consignor is asked to prove that the goods were lost through neglect upon the part of the Railway!

6. Further, when goods are lost the only reply, if any, which is received is a stereotyped one to the effect that the Railway is not responsible since a Risk Note was signed. No details are given as to how or when and where the theft took place. In some cases the Railway Authorities are kind enough to extend their sympathy and say that they very much regret the loss but as the consignment was booked at Owners' Risk under Form B or H, nothing can be done. In a few instances, in order to avoid liability, my Committee observe

that they merely state that the theft was due to a running train robbery without adducing any proof in support of such a contention, or rather assumption. In such circumstances, my Committee submit, it is practically impossible for the consignor to prove the charge of neglect, even though there may have been not only neglect but actual theft by Railway servants. The onus of proof must, therefore, be shifted or the Railways must be compelled to give the consignor all details as to the loss, submitting the Police report, if any, to enable him to judge whether the goods were lost through neglect or not. My Committee are also of opinion that the word "wilful" before "neglect" should be removed. This word only complicates matters and gives rise to legal quibbles, *e.g.*, if a Railway Choukidar goes off to sleep instead of keeping watch and ward, is it only "neglect" or "wilful neglect"? Such details, they consider, should also be furnished within a reasonable time, say, within three months, after the loss of the goods, failing which the Railways must be made liable. Under Article 31 of the Limitation Act XV of 1877, as amended by Act X of 1899, a suit against the Railway Company for loss of goods must be filed within one year from the date on which the goods lost were supposed to have been delivered. It is not an uncommon experience amongst members of this Association that months and months elapse before the final reply of the Railway Company repudiating the claim is received. When a complaint is lodged, an answer is sent that the matter is engaging the attention of the Company. The same reply is, however, given time and again whenever a fresh reminder is sent. One member has supplied my Committee with an instance in which more than a year elapsed before the Railway Company finally repudiated the claim on the strength of the Risk Note held and even then only after nearly a dozen reminders had been sent! When the administration concerned was pressed for details, the member was afforded a reply after a further three months to the effect that the seal was removed from the wagon between certain stations and the bale in question stolen. No suit, of course, could be filed as it would have been time-barred. This instance may be an extreme case but there is no doubt that the time wasted before a reply, or even an acknowledgment, is sent, is considerable and that the reply is never a satisfactory one from the consignor's point of view.

7. In conclusion, I am to state that the Railways no doubt take the view that the Risk Note is an agreement between the parties and that the consignor, having entered into such an agreement, must abide by it. I am, however, to submit that it is a merely one-sided agreement to which the consignor is forced to give his consent in order to be able to escape from paying an exorbitant rate of freight. It is the considered opinion of my Committee that, in ordinary circumstances, such a one-sided agreement would be set aside by a Court of law as being against justice, equity, and public policy. The Risk Note Forms, however, being originally approved by the Governor-General in Council, are held to be valid although it is known that they inflict a great hardship on the trading community. My Committee, therefore, urge in the strongest terms at their command that the Risk Note Forms be revised in the manner and to the extent indicated in the previous paragraphs as in that way alone can the serious, and at the same time just, public grievance to which the present forms have given rise be removed.

Serial No. 94. *Copy of letter No. 1972-1922, dated Calcutta, the 23rd June 1922, from the Secretary, Bengal Chamber of Commerce, to the Secretary to the Government of India, Railway Department (Railway Board).*

Bengal Chamber of Commerce.

In continuation my letter* No. 1842, dated the 12th June I am now directed to submit the following expression of the opinion of this Chamber on the points referred to in the marginally noted letter with regard to the subject of railway risk notes. The letter explains that, in pursuance of the terms of a

*Not printed.

Letter No. 505-T-21, dated the 7th April 1922, from the Government, of India; Railway Department (Railway Board) to the Bengal Chamber of Commerce.

resolution adopted by the Legislative Assembly on the 9th March, a Committee have been appointed by the Government of India to consider the question of the revision of railway risk notes: and opinions are invited on the form, construction and application in practice of the risk notes now in use.

2. While it is stated that it is the intention of the Railway Risk Note Committee to review all the existing forms of risk notes, you explain that representations received by the Government of India from time to time have been concerned principally with the following points, and you request that these should receive special consideration:—

- (1) Whether the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration for carriage requires modification. (This refers specially to the terms of Risk Note Forms B. and H.)
- (2) Whether the words loss, destruction or deterioration used in the Risk Note Forms should be altered or added to or defined in such a manner as to secure for the consignor the right to compensation (for the loss of the whole or part of the consignment) for the above arising from the wilful neglect or criminal acts of the servants of the Railway Administration.

Risk note forms B and H are ordinarily known as owners' risk notes. Form B is the form used when the sender elects to despatch at a "specially reduced" or "owner's risk" rate articles or animals for which an alternative "ordinary" or "risk acceptance" rate is quoted in the tariff. Form H is used as an alternative to form B when the sender desires to enter into a general agreement instead of executing a separate risk note for each consignment; its terms, so far as the matter of relieving the railway from liability is concerned, are the same as those of form B.

3. The difference in the liability of railways in the case of *railway risk* and *owner's risk* may be briefly defined as follows:—(a) in the case of *railway risk* the railway accept liability unless they are in a position to show that in spite of the utmost care and diligence, the loss or damage occurred through circumstances altogether out of their control. In the case of *owner's risk*, for losses of less than a complete package, or for damages and deterioration, the railway is free from all liability whatsoever, irrespective of how such loss or damage may have been caused. In the case of the loss of a complete consignment, or of one or more complete packages forming part of a consignment, the railway is exempt from liability if the loss occurred through fire, robbery from a running train or any other unforeseen event or accident. If the loss occurred from some other cause than one of these the railway is not liable unless the consignor can prove that the loss is due either to the wilful neglect of the railway or to theft by, or the wilful neglect of its servants. The onus of proof is on the consignor, not on the railway, and, it is this condition which has given rise to so much discussion in the past; for it is contended that it is quite impossible for the consignor to prove, for example, that a particular loss has been caused by the wilful neglect of the railway. He argues that it should be within the power of the railway to prove that such loss has not been so caused; but the railway on the other hand argue that it is equally impossible for them to produce definite proof to this effect. Suggestions have frequently been made that the terms of the risk notes should be modified in favour of the consignor, but the attitude of the Chamber has been in the past that, if the terms of the notes be so altered as greatly to enlarge the liability of the railways, the latter may enhance their rates.

4. The question has again been very fully examined by the Committee who have consulted all members of the Chamber, and the various Associations affiliated to the Chamber which are interested in risk notes; and they have come to the conclusion that circumstances have now changed sufficiently to justify the Chamber in re-considering the attitude which they have hitherto adopted. There has recently been issued the report of the Railway Police

Committee, which is of so much interest in connection with this risk note enquiry that it seems rather surprising that attention has not been specifically drawn to it in making the reference on the subject of risk notes. For there is little doubt that the dissatisfaction felt with the existing risk note system is to a very great extent due to the losses suffered by the commercial community in consequence of thefts—the character of which the public cannot prove—from consignments while the latter are in the custody of the railways. The Railway Police Committee's report gives some illuminating figures in this connection. They say:—

Para. 12

There can be no question that losses by theft and pilferage* have increased. So far as the increase is due to causes other than those into which it is our duty to enquire, it is generally attributed to the rise in the cost of living. No statistics are available to show the full extent of the evil, but in ten years the amount paid in compensation by seven of the principal railways has risen from 11·95 lakhs to 70·27 lakhs. In the same period the goods earnings on these railways rose from 25·37 crores to 38·44 crores. In other words an increase of 52 per cent. in the goods earnings was accompanied by a rise of 488 per cent. in compensation and the percentage of the goods earnings paid in compensation rose from 47 to 1·83. The bulk of the increase has occurred since 1917.

It is however explained, in paragraph 14 of the Report, that the amount paid in compensation covers damage to goods by fire, water and accident, and loss by misdespatch and misdelivery; and that from 15 to 20 per cent. should probably be allowed on this account. This being so it may be assumed that the percentage of the goods earnings paid in compensation would be, not 1·83, but something under 1·5.

5. With regard to these remarks, it would be useful if the Railway Risk Note Committee were to ascertain from the different railways more detailed particulars under the following heads:—

- (a) the total earnings for the carriage of goods,
- (b) the earnings from goods carried at railway risk,
- (c) the earnings from goods carried at owner's risk,
- (d) the total claims received and paid in respect of goods carried at railway risk,
- (e) the total claims received and paid in respect of goods carried at owner's risk.

The actual relationship between claims paid and earnings in the case of goods carried at railway risk and at owner's risk respectively would be of assistance in considering an argument that has been used, namely that a railway, in giving a cheaper rate in the case of goods carried at owner's risk, is really paying an insurance premium to divest itself of the liability which attaches to it in the case of goods accepted for carriage at railway risk. It may be useful to give this argument *in extenso*:—

In the case of goods booked at owners risk, the consignor is really in the position of an Insurance Company and the Railway Company in the position of a man who insures. The Railway Company pays an insurance premium to the consignor in the form of a reduction in freight. When the matter is looked at in this way, it will be seen how unreasonable is the proposal that the onus of proof should be put on the Railway who is the assured. When a man insures property with an Insurance Company, such Company has to accept liability for loss unless it can prove that the loss was due to wilful negligence or misconduct on the part of the assured. How much insurance business would be done if the onus of proof that there was no wilful negligence or misconduct was put upon the assured?

6. In connection with this question of liability, and the argument that if the conditions of risk notes are so altered as to enlarge the liability of the railways, the latter may increase their rates, there is an important point which should be considered. The Railway Police Committee say:—

Para. 22.

There is ample evidence to justify the charge that the bulk of the pilferage and not a little of the theft is done by, or with the connivance of, the railway staff.

And again:

Para. 15-16.

We think the evidence justifies the conclusion that the total value of the property stolen on railways in India does not fall short of a crore of rupees per annum. The number of offences, if all the petty pilferages are included, must run into millions. Of these, in 1919, only 33,555 were reported to the police and of the reported cases less than 16 per cent resulted in conviction.

* The term "pilferage" is used by the Railway Police Committee to mean abstraction of a portion of the contents of a package; "theft" means the removal of one or more whole packages.

The figures are startling. Fortunately the remedies, we believe, are simple.

The Railway Police Committee make a number of recommendations with a view to improving the existing state of matters. They say that, while the changes proposed involve some small additional expenditure, the adoption of these will, they believe, save Government, the railways and the public many times their cost every year. If the recommendations are to be acted on—and *the Chamber urge very strongly in all these interests that the recommendations should be carried into effect with the least possible delay*—it follows that the railways will have to incur a certain amount of expense quite irrespective of the possibility of any additional liability being attached to them if they are compelled to assume the task of discharging the onus of proof in the case of losses under Owner's Risk-notes.

7. It has been argued that in such circumstances, and with the additional measures which will be taken if the recommendations of the Railway Police Committee are acted on, they will not in point of fact be assuming any serious liability in accepting the onus of proof, for it is contended that railways will have a much more satisfactory machinery than they now have to enable them to prove that the loss is not one for which they can be held responsible. In other words, apart altogether from any alterations which might be decided on as a result of the present deliberations of the Railway Risk Note Committee, those measures which the railways would have had to introduce, if the onus of proof be placed on them, will now have to be introduced for other reasons; and this being so, the cost of such measures, appertaining as it would to the better protection of all classes of goods, cannot be hereafter considered in conjunction with the compensation paid under changes in the conditions governing owner's risk consignments in order to justify an increase in rates. Looking at the matter from another point of view, the introduction of better preventive measures may be expected to produce a very great improvement, and consequently material savings in railway losses and in the amount of compensation paid in the case of railway risk claims. It is suggested that it is only reasonable to assume that these two savings would go very largely towards balancing the increased compensation payable on owner's risk claims.

8. As against these arguments, the railway point of view is that they already have such heavy losses, and such heavy claims to pay, that it is in their own interest to take the utmost precautions that can reasonably be taken. These losses and claims are so great that they are only too ready to accept, and to act on, the recommendations of the Police Committee. It is contended that if the onus of proof is placed on the railway, their liability under both forms of risk note becomes practically the same, for it will still be impossible for them in most cases to produce definite proof as to how the loss occurred; that is to say, they will be in no better position than the owner is now. Under these circumstances it is possible that the railway may not continue to quote two separate rates, and although the Committee have no figures showing the extent to which the owner's risk rate is taken advantage of, it is evident that, with all its defects, a section of the public would prefer a continuance of the present conditions to losing the owner's risk rate altogether.

9. In this connection, we should refer to a suggestion which has been made fairly often, that railway servants distinguish between goods consigned at railway risk, and goods consigned at owner's risk. The suggestion is that when the goods are at owner's risk railway employees think there is less chance of a searching enquiry being made in the event of a loss occurring. On this point, the Railway Police Committee report as follows:—

We have not been able to obtain any figures to show whether consignments booked at owner's risk are more subject to pilferage and theft than others, and any figures that the railways could furnish would be incomplete as many cases are never reported. But railway officers deny that the handling staff can distinguish between consignments sent on owner's risk and those sent at railway risk, and on the evidence before us we are unable to hold that less care is taken by Railway Administrations of the former than of the latter. Para. 40.

On the other hand, it has been stated that there are certain classes of goods which the railways will carry only at owner's risk, a fact which is doubtless

known to the handling staff. The railways say, however, that this is not strictly correct.

10. The Committee think it desirable that they should place before the Railway Risk Note Committee the various points which they have considered in the course of their discussion on this important subject; and, having done so, they will now explain the conclusions to which they have come. They think it will be generally conceded that Risk notes B and H in their present forms are anomalous conferring, as these do the right to compensation for losses due to the negligence or criminal acts of railway employees, but imposing on the public the impossible task of proving that the losses are so due. The Chamber would accordingly like to see this condition so modified that the onus of proof would be placed on the railways. On the other hand, if such a change must result in the withdrawal, or the considerable enhancement, of owner's risk rates, the Chamber would not, for the following reasons, desire to press this point; firstly, because, as it stated above it would appear that, notwithstanding the existing defects in the conditions, it is clear that a section of the public prefer owner's risk rates to the alternative of railway risk rates; and secondly because, having regard to the report of the Railway Police Committee, it is to be presumed that the admittedly deficient protective and preventive measures now existing will henceforth be radically altered, with the probable result that, not only will losses under owner's risk consignments be reduced but the proportion of these losses which the railways would be able to satisfy themselves were due to the negligence or criminal action of their employees would be increased. There is a further point which must be emphasised. Should it be decided to transfer the onus of proof to the railways, the Chamber would urge that, at any rate for a period, and until the effect can be seen of the new protective and preventive measures, owner's risk rates should not be withdrawn but continued at the existing ratio of difference in relation to railway risk rates, or at least on the basis of no considerable reduction thereon.

11. It is unnecessary to deal at any length with the second point referred to in paragraph 4 of your letter of 17th April and it need only be said that in the opinion of the Chamber no alteration is called for except such verbal alteration as may be necessary should it be decided to place the onus of proof on the railways.

12. There is only one more point to which the Chamber need refer. In several of the letters addressed to the Chamber it has been stated that the railways unreasonably insist on consignors in certain cases signing a risk note in Form A, the form designed for use when articles are tendered for carriage which are either already in bad condition or so defectively packed as to be liable to damage, leakage or wastage in transit. We have discussed this matter, and we are disposed to think that it is one concerned more with the application of the forms of risk note than with any question of principle. Our enquiries show that the practice differs on different railways; and while it is certainly desirable that there should be uniformity of practice as far as this may be possible, we are inclined to think that this is a point for representation to the individual railway when a case arises in which the consignor thinks he has a grievance.

Serial No. 95.

Letter dated the 21st June 1922.

From—The Maskati Cloth Market Association, Maskati Market, Post Kalapur, Ahmedabad,

To—T. V. SHISHAGIRI AYYAR, Esq., M.L.A., Chairman, the Railway Risk Note Revision Committee, Simla.

**Maskati Cloth
Market
Association,
Bombay.**

On behalf of and under the directions of the Maskati Cloth Market Association of Ahmedabad I beg to place before you for favourable consideration by your committee, my Association's views regarding the revision of Railway Risk Notes.

I. My Association has a membership of 566 firms, dealing in piece-goods principally manufactured at the mills in Ahmedabad, Viramgam and other places in Gujarat and Bombay. The interests represented by my Association

are large inasmuch as all firms doing export business of textiles and piece-goods manufactured in Gujarat are members of the Association. The total number of bales booked by the members of the Association to different parts of India comes to about 500,000—of the aggregate value of Rs. 20 crores approximately.

II. My Association endorse the principle laid down in S. 72 of the Railways Act, that as a general rule, Railway Companies should not be allowed to limit their responsibilities. In India each Railway Administration enjoys practically a monopoly of the carrying trade and have been in a majority of cases granted concessions and helped financially by the State at the cost of the general taxpayers. They should therefore primarily exist for the benefit of the taxpayer—whether as a merchant or as a passenger. My Association submits that the guiding principle to be always kept in view is that any attempt to limit their responsibility ought not to tend to lower the standard of their duty to the public or the standard minimum care which public carriers ought to be made to take of the goods handed over to them for carriage.

III. Of equal importance with what my Association has called the guiding principle is the fact that being corporate bodies with extensive finances and enjoying monopoly without any competition of public carriers of the same kind, Railways are already in a position of advantage over the individual trader booking goods for carriage, and this natural domination should not be further supported as against the individual trader, by reducing their responsibility almost to a nullity in practice. An attempt to limit their responsibility must also rigidly safeguard the interests of the individual instead of driving him to recklessly accept any Risk-notes, out of sheer helplessness.

IV. My Association therefore urges that the Railway Administrations should not be allowed to limit their liabilities as bailees under Ss. 151-152, Indian Contract Act. Those sections sufficiently protect bailees and in view of what is stated in paragraphs 2 and 3 above, my Association is of opinion that there is no need for limiting the responsibilities of the Railways, under Ss. 151-152, Contract Act. It will be seen that S. 152 exonerates the bailee for responsibility from loss, destruction or deterioration if the standard of care prescribed in S. 151 is taken. That section further leaves the bailor the liberty to enter into a special contract with the bailee to hold the latter liable for loss, destruction or damage, accruing in spite of and notwithstanding the amount of care prescribed by S. 152 having been taken by him. It will be thus seen that S. 152 has already imposed a limited responsibility on the bailee. It will not be every case of loss, destruction or deterioration for which the Railway Administration will be held liable. They can exonerate themselves by stating that they had taken the amount of care the law required, and the law provides for no extraordinary standard of care. The Railway Administrations have not provided for any forms of agreements whereby they would enter into the special contract as contemplated by S. 152 under which a consignor can hold them liable for any loss, destruction or damage occurring in spite of the amount of care prescribed by S. 151 having been taken by the Railway Administration. They have thus practically accepted the limited responsibility under S. 152, the further reduction of which is neither necessary nor desirable in public interest. Even now therefore when they carry goods at what they call "Railway Risk" they are not really speaking taking any risks and are virtually carrying the goods at "Owner's Risk" because, it will be easily seen, that all that the Railways are required to do is to take the amount of care prescribed by S. 151 and when that is taken, the risk for any loss, destruction or deterioration is the owner's and not the Railways' as the law stands. An attempt to reduce further the limited responsibility under S. 152, Contract Act, therefore amounts to freeing the Railway Administrations from the consequences of failure to exercise the amount of care required of them in respect of the goods delivered to them for carriage. My Association is of opinion that the present Risk-notes as prepared do provide some exceptions but they are quite illusory and of practically no value as we hope to be able to show later on.

V. The general observations above indicate the policy my Association earnestly urges your committee to adopt in respect of the question of Railway Risk-notes. To carry out that policy my Association would suggest the following kinds of Risk-notes:—

- (a) **“Railway Risk.”**—This is not what is at present known as “Railway risk,” *i.e.*, where the Railway Company holds itself responsible for loss, deterioration or damage *from any cause whatever*, and does not exonerate itself from liability by pleading the standard of care prescribed under S. 151, Contract Act. In other words, this will be the “Special Contract” by the bailee contemplated by S. 152, Contract Act. It is submitted that it will be open for Railway Administrations to enter into such contracts. S. 72 puts restrictions on limitation of responsibility and not on taking additional risks.
- (b) **Ordinary or Owner’s Risk.**—Class I, *i.e.*, where the responsibility of the Railway Administration is what is provided in S. 152, Contract Act, as the bailee’s responsibility in the absence of a special contract to the contrary. The Railway Administration will not be held liable, under these notes for any loss, destruction or deterioration, if they have taken the standard care in the carriage of goods. This is what is at present misnamed Railway Risk; the Railway Administration in fact runs no risk but the owner does run all the risks of the goods being lost, destroyed or deteriorated in spite of absence of negligence on the part of the Railway Administration. No special note is necessary for this. The absence of any note will mean the ordinary statutory liability of the Railway Administration.
- (c) **Owner’s Risk.**—Class II, *i.e.*, where the Railway Administration is free from responsibility in the manner and under the conditions laid down in the present Risk-notes.

The tariff rates chargeable will be of course different when goods are despatched under different agreements as to the risks.

VI. The question of tariff rates may perhaps be deemed out of the scope of inquiry by your committee. But a passing reference to it will help to elucidate the point of view of my Association regarding Risk-notes in general. In the opinion of my Association the present “special reduced” rate should apply as ordinary tariff rates in cases of agreement Owner’s Risk, Class I. This follows as a corollary from what has been stated previously. In the proposed Owner’s Risk, Class I, the Railway Administration runs absolutely no “Risk” properly so called. It is, however, charged with the duty of taking the prescribed care and when that is done, all the “Risk” properly so called is the owner’s. There ought not to be a premium for taking the statutory care of the goods. It is the minimum which has to be expected of all Railway Administrations. The present “ordinary” tariff is so high and it is therefore so rarely availed of that it may well be said to have been non-existent for all commercial purposes. Such tariff may be applied to what is proposed in the foregoing para. as the real Railway Risk agreement. Even in that case too, the rate will be very high. The natural difference between those rates and Owner’s Risk, Class I should be the insurance charges to cover all possible risks of accidental fires, theft, robbery, etc., and therefore the rate for Railway Risk booking should be the rate for the Owner’s Risk, Class I *plus* the insurance charges and nothing more. In cases where merchants desire to book goods at their own risks freeing the Railway Administration from consequences of loss, destruction or deterioration from any cause whatever, *i.e.*, under the conditions in the present Risk-notes agreements B and H the tariff rates should be very much lower as the Railway Administration is practically relieved from taking even the statutory care of the goods.

VII. It is relevant here to advert to the present state of things which will go to show that it is necessary in public interests to adopt the policy and therefore the kinds of Risk-notes and the tariff rates as suggested above by my

Association. The present state of things is the outcome in the main of the combination of the following factors :—

- (1) The difference in the "ordinary" and the "special reduced" rate is so great as to prevent merchants from taking advantage of the "ordinary" rates. This places the Railway Administration in a position of undue and unfair advantage over the trader to free itself practically not only from all the risks whatever but also from the consequences of its own want of statutory care.
- (2) The present "special reduced" rate Risk-note practically absolves the Railway Administration from all responsibility, and the exceptions provided are merely on paper and of no practical value. They throw on the trader the burden of proving a set of circumstances which he can never do.

This results in :—

- (a) Removing any incentive to take even ordinary care of goods by the Railway Administration, goods are kept anywhere, handled in any manner, taken to destination at any time. None cares or deems it his duty to be careful about seeing that there is no loss, damage or deterioration to the goods due to neglect of ordinary care.
- (b) Encouraging Railway subordinates to carry on all sorts of thefts and pilferages as they know that the owner of goods can never discharge the burden of either proving "wilful neglect" of *theft* by *Railway servant* nor can he claim anything so long as there is no loss of a "complete consignment" or "one or more complete packages forming part of a consignment."

The consequent loss to the mercantile community and also to the general public by proportionate rise in prices, the demoralisation of Railway staff and in their train of mercantile community have assumed such serious proportion as to arrest attention of all thinking and patriotic men. My Association submit that there will be no effective check on these unless Railway Administrations are compelled to be more vigilant and watchful of the consignors' interests by following the policy of preventing them from limiting their liability by any agreements which tend to lessen statutory care of goods required of them and which throw the burden of proving the causes of loss, deterioration, destruction on the consignor to entitle him to hold the Railway Administration liable.

VIII. Coming to the question of Risk-notes at present in use, my Association will compile its remarks to Risk-note Forms A, B and H, with which my Association is mainly concerned.

AS REGARDS RISK-NOTE FORM A.

This is intended to be used when articles tendered for carriage are *either* already in bad condition or so defectively packed as to be liable to damage, leakage or wastage in transit. There is not much to be said against the object and the form of this Risk-note. The object is that the Railway Administration should not be held liable for loss which is brought about by circumstances of the owner's creation. But the whole trouble arises as to what should be taken as the standard of "bad condition" and "defective packing." It has become a common practice with the Railway staff to obtain such notes from merchants who pass them out of sheer helplessness. There are no other carriers through whom the goods could be sent and the trader again cannot each time afford to be on cross terms with the Railway staff nor can he afford to allow his goods to be detained and exposed to all sorts of risk at the Railway yard till the matter is referred to the D.T.S. and decided by the inspector. This type of Risk-note is obtained for even securely packed cloth bales sent to the Station directly from the mills. Generally cloth bales are well packed with iron stripes to stand the handling in transit. The Risk-note, moreover, seems to have been primarily intended for

perishable and other fluid articles such as vegetables, ghee, etc. Cloth is not likely to be "in bad condition" or "liable to leakage or wastage" by defective packing. It is liable to damage no doubt. My Association therefore urge upon discontinuing altogether the use of Risk-note Form A in case of cloth, yarn and cotton bales, as the Risk-note was never intended for such articles and ordinarily such bales are sufficiently well packed. This will remove a source of constant harrassment to cloth, yarn and cotton merchants. My Association would further urge the deletion of the words "leakage" and "wastage" and the words at the end of the Risk-note "and for any loss arising from the same" in all cases and where articles are fluids the words should be "and for any loss arising from such leakage or wastage." In all other cases the Railway Administration should be freed only from responsibility as to the conditions in which the articles, which are in bad condition or defectively packed reach the consignee. This Risk-note is a source of amount of loss to merchants due to pilferages and theft by the much-demoralised Railway staff. A strict supervision and deterrent punishment of the staff where cases of harrassment are noticed are also necessary to improve matters.

RISK-NOTES FORMS B & H.

The views of my Association as regards these have been generally stated above. In these Risk-notes the proviso should be so worded as to show clearly that what is intended to be excluded from the true "wilful neglect" is nothing but an accident. It should be as follows :—

"Provided the term "wilful neglect" shall not be held to include any event or accident over which the Railway Administration had no control or which could not be reasonably prevented by the Railway Administration by taking proper precautions."

Accidental fires will come under the proviso, so also accidental robberies. But where robberies are taking place very often, the defence of robbery should not be open to the Railway Administration.

Again at present the burden lies on the owner to prove that his case comes within the exception. It is impossible in the very nature of things for the owner to prove affirmatively "wilful neglect" or "theft by" Railway servant. The evidence (documentary as well as oral) whether it be of the Railway police or servant, is all with the Railway Administration. The journey is very long and the goods are lying with the Railway for days and days together. In these circumstances, no merchant can ever hope to prove that his case falls within the exceptions provided in the Risk-note. On the other hand, the Railway Administration has all the facility of providing absence of "wilful neglect" or "theft by" its servants. The Risk-note should be, therefore, so framed as to throw the burden of proving absence of "wilful neglect" or "theft by" its servants on the Railway Administration. My Association would suggest the following phraseology :

.....Harmless and free from responsibility for any loss, destruction or deterioration of or damage to the said consignment from any cause not due to the wilful neglect of the Railway Administration or to the theft by or to the wilful neglect of its servants, transport Agents consignment, provided such wilful neglect or theft will be *prima facie* presumed to be the cause of any loss, destruction, etc., which may occur and provided further the true "wilful neglect" shall not be held to include etc. (as suggested above).

IX. To sum up briefly my Association submits that :—

- (a) As Railways enjoy a monopoly of carrying trade without competition, nothing should be done to lessen the standard of duty they owe to the public and the standard of care they ought to take of goods as public carriers.
- (b) As Railways are already, by their very position, in a position to dominate the individual trader, nothing should be done to increase that dominance to the prejudice of the individual trader.

- (c) Even at present, under the ordinary law, Railways do not undertake any "risk" properly so-called. What is known as "Railway Risk" is really Owner's Risk. There should be, therefore, three kinds of agreements, *viz.* :—
- (i) **Railway Risk.**—Where Railways in addition to the ordinary liability as bailee also accept liability as insurers. A form of note should be provided for this.
- (ii) **Ordinary or Owner's Risk, Class I.**—Where the Railways undertake the ordinary statutory liability under S. 72, Railway Act. No form of risk is necessary for this.
- (iii) **Owner's Risk, *i.e.***, where the present Risk-note Forms B and H with the modification suggested by my Association will be used.
- (d) There should be different tariff rates for the above three kinds of agreement. The present ordinary rate is too high. The present "special reduced" may be kept for what is described Owner's Risk, Class I above. That rate with an addition for insurance may be charged for Railway Risk properly so called, while that rate should be substantially reduced for Owner's Risk, Class II.
- (e) The above will safeguard the interests of the trader without putting any undue strain or disadvantage to the Railway who will have to be on the alert for exercising the care of goods law expects of them and for preventing thefts and pilferages by its staff. The consequent saving to the merchants and to the general taxpayers by reduction of prices will be substantial and it will also effectively check the appalling demoralisation of the Railway servants as a class.
- (f) Risk-note A should be done away with so far as cloth yarn and cotton bales are concerned. In other cases the alteration and restrictions suggested may be carried out.
- (g) Risk-notes B and H should be so framed as to cast the burden of proof of absence of wilful neglect and theft by Railway servants on the Railway Administration. The proviso as to "wilful neglect" not including fires, etc., should be so amplified as to make it clear that only accidents are included in the proviso. The suggestions are submitted above in details.

Letter dated Bombay, the 23rd June 1922.

Serial No. 96.

From—The Secretary, the Bombay Shroff Association,

To—The Assistant Secretary, Railway Department (Railway Board), Simla.

1. As directed by my Committee I beg to submit the following views of my Committee in the matter of "Railway Risk Notes" which you will be kind enough to place before the Committee appointed by the Government of India. **Bombay Shroff Association, Bombay.**

2. My Association has on its rôle about 300 members who are shroffs, merchants and commission agents in the city of Bombay. They generally advance large sums of money on the goods consigned to them or by them and hence they are greatly interested in the matter of "Railway Risk Notes."

3. The system of demanding Risk Notes from consignors is itself a very bad one, and the Government should stop it in the interest of the general public. Railway Companies as public carriers should be called upon to take proper care of all the goods entrusted to them and they should not be allowed to put any temptation in the ways of the public by offering lower rates and thereby escape from the legitimate responsibility. Section 72 of the Railway Act providing for a reduction of responsibility of Railway Companies as public carriers should be entirely revoked so that relation between a consignor and a Railway Company will be decided in accordance with the Indian Contract

Act. If this suggestion is carried out all the grievances about losses, pilferings, negligence, etc., will be removed and the only question that will remain for consideration will be that of the rates that could be charged for different commodities. The present rates charged for consignment at Owner's Risk are high enough and no Government anxious to safeguard the Trade and Industries of the Country, can, even think of allowing the Railway Companies to levy still higher rates. I can cite many instances to show the inequities of the Railway Tariff and prove that the policy of Railway Companies is suicidal, rather than encouraging to the internal Trade of India; but the question of tariff and its policy are not referred to this Committee, so it would be useless to dwell at length on this subject; but I may be allowed to point out that the present Railway Risk Rates are so high that no trade can afford to pay those rates. The present "Owner's risk" rates are at its maximum level and if the Railway Companies are at all interested in the prosperity of Trade they should be satisfied with the present "Owner's Risk" rates even after abolishing "Risk Notes."

4. The working of the system of Risk Notes is still worse. Many scandals in this respect have been brought to the notice of your Committee by the Indian Merchants Chamber and Bureau; other Associations of this city said a very sad tale, but in addition to those I may be allowed to point out that such articles as galvanised iron pipes and full pressed cotton bales required Risk Note A which is ridiculous on the face of it. Under instructions from superior officers or with a view to extort money, the goods booking clerks have formed a habit of putting such remarks as improperly packed, if wet by rain at owner's risk, not responsible for damage or diminution or breakage, bags spilling, loosely packed, sewing defective, etc., which mean only to evade Companies' responsibility as public carriers to look after the safety of the property consigned to their trust. If a consignor refuses to sign a particular form his goods remain unbooked for days together and has to run the risk of damage, theft, pilfering, and fluctuations of market. This leads to dishonest methods which are scandalous for merchants as well as for Railway Companies.

My Committee is strongly of opinion that so long as Risk Notes are allowed their existence this sort of scandal is bound to continue.

5. Still if your Committee can not find its way to recommend total abolition of Risk Notes, the form should be revised altogether removing the ambiguities of language and safeguarding interest of Trade. The difference of Railway Risk rates and the Owner's risk rates should be narrowed as far as possible. It may be suggested that the present Owner's risk rates should be taken as a standard for Railway Risk rates and a rebate of 10 to 15 per cent. be allowed to those consignors who prefer to send the goods at their own risk. To safeguard the Railway Companies against damages of improperly packed consignments it should be laid down that if a booking clerk rejects consignments on the plea of improper packing the consignor can appeal to a Committee of Railway Officers and merchants who may decide whether the goods are properly packed or not, and fees of the surveyors should be borne by the party at fault. If a consignor wishes to consign his goods in an improper state of packing the deficiency in packing should be accurately described on the railway receipt so that damages caused by any other reason than that of packing may be borne by the Railway Company concerned.

6. In case risk notes B, C and H are not abolished it should be made incumbent upon Railway Companies to prove that the loss or damage to a particular consignment or its part was due to causes beyond their control. This would remove negligence and thefts by Railway servants or their associates.

Serial No. 97.

Dated the July 1922.

From—The Grain Merchants' Association, Ahmedabad,

To—T. V. SHESHAGIRI AYYAR, Esq., M.L.A., Chairman, the Railway Risk Note Revision Committee, Simla.

Grain
Merchants'
Association,
Ahmedabad.

In pursuance of the resolution made by the General body of the Grain Merchants' Association at Ahmedabad I on behalf of my Association, beg to hereby submit before you for favour of kind perusal and consideration by your

Committee the views of my Association in re : revision of the Railway Risk Notes.

(I) Ahmedabad is the centre of Gujarat. It is one of the leading cities in India. In commercians population it ranks fifth. In Mill Industry it is second to Bombay. Its export and import business is very extensive and has been, day by day, rapidly multiplying. This place is an eye witness to the damage being done to the consignments by the railway employees under the shield of the Risk Note Forms. The damage rises very high when this station is neither a receiving nor forwarding station but is an intermediate one. Inconvenience suffered on account of the unfavourable and cross attitude of the railway staff and the loss sustained on account of the weak management and want of proper care and caution on the part of the railway company among similar other causes of a like nature gave birth to this Association having its principal place of business at Ahmedabad. The interest represented by my Association is exceedingly large inasmuch as it is constituted of the merchants dealing in grain and seeds at Ahmedabad.

(II) It has been, of very late years, the view of the legislature in England that the common carrier should incur a liability more extensive than that incurred by ordinary bailees. The rule of common law is that he is liable for all accidents or loss not caused by the act of God or the King's enemies. He is in fact an insurer and is responsible subject to the exceptions mentioned for any loss or damage without proof of negligence on his part. This rule prevailed in India before the Indian Contract Act came into operation and stands unaffected by it, for in the opinion of the Judicial Committee the Act does not deal exhaustively with any particular chapter of the law of contracts and was not intended to embrace the case of a common carrier for whom some provision was already made by the Act of 1865.

(III) The said rule ought to obtain in the case of carriers by rail in India where the rights and the franchises enjoyed by them are far more numerous and extensive where this sort of trade has its monopoly, where concessions after concessions are poured in, and where benevolent supports have been repeatedly offered by the Government at the cost of the public money without the least regard to the convenience, comfort and care of the interest of the general taxpayer whether as a merchant or as a passenger. They should primarily exist not for the aggrandizement of money but for the welfare and interest of the public. This rule has been relaxed favourably to the railway company which can easily shake off the liability resulting even under the railway risk note form by the proof that it took as much care as was required of it by law. My Association endorses the principle laid down in section 72 of the Indian Railway Act, that as a general rule, the railway company should not be allowed to further limit the liabilities under sections 151 and 152 of the Indian Contract Act, any endeavour to do so is tantamount to the public interest and the commercial progress is likely to be jeopardised. More the facility is given more the abuse of power is feared. Any variation in the standard of the duty to the public or the standard minimum care which public can demand of the public carriers is havoc upon the public.

(IV) The railway company a corporated body with ample resources and enjoying a monopoly and free from the fear of competition is always in a position to dominate the will of the public and if this domination is likely to receive any further support by reducing the responsibility to almost nullity it will drive a trader to recklessly accept any risk notes out of sheer helplessness. To rigidly safeguard the interest of the public no further reduction is at all desirable. My Association is, therefore, of opinion that the provisions embddied in sections 151 and 152 of the Indian Contract Act are wide enough to protect and to exempt the railway company from liability, any attempt to further reduce the limited liability, under section 152 amounts to freeing the railway company from the consequences that might follow on account of the failure to exercise the amount of care required of it in respect of the goods tendered for despatch.

(V) Section 151 defines the care to be required of a bailee and section 152 deals with the liability. The railway company is absorbed from the liability for the loss, destruction or deterioration of the goods bailed when it has taken the amount of care of them described in section 151. The Indian Law provides for no extraordinary standard of care, as section 151 sweeps away with all the distinction between the degrees of care required of the bailees. My Association urges, therefore, to accept the same standard in determining the liability of the railway company whatever form the risk note might assume.

(VI) Section 152 enables the bailor to enter into any special contract with the bailee holding the latter liable for loss, destruction or deterioration of the goods bailed from any cause whatsoever. Section 72 of the Indian Railway Act is not free from ambiguity inasmuch as it is silent as to whether the railway company should incur any additional risk. It has been the opinion of many that section 72 of the Indian Railway Act puts restriction upon the responsibility and does not forbid the taking of additional risks. It is under section 152 of the Indian Contract Act open for the railway company to enter into such special contracts. My Association is, therefore, of opinion that the statutory form should be provided for by the railway company, because in the absence whereof the railway company will be held liable for the loss, destruction or deterioration of the goods booked under the railway risk when it has taken the amount of care required of it by law. The words " railway risk " are ambiguous and to hold the railway company liable for any loss, etc., from any cause whatsoever statutory form expressing such terms in clear language is needed. The present railway risk is not really speaking bearing any risk but is virtually carrying the goods at owner's risk.

(VII) The general observations above indicate the policy my Association earnestly urges your committee to adopt in respect of the question of risk notes. To carry out that policy my Association would, with due deference to your honour, venture to suggest the following kinds of risk notes. The risk note forms in prevalence are only two : (a) Railway risk, and (b) Owner's risk.

Under the suggestion they may be classified into three :—

- (a) Railway risk,
- (b) Ordinary risk,
- (c) Owner's risk in the manner and under the conditions laid down in the present risk notes.

- (i) The railway risk in prevalence falls under the category of the ordinary risk and the railway risk under suggestion would hold the railway company responsible for loss, destruction and deterioration due to any cause whatsoever. The proof of care taken by it would not exempt it from the liability. Its liability is a little higher than that of the carrier in England. For the legality of this sort of contract a statutory form should exist. This will not be inconsistent with the provisions of the section 72 of the Indian Railway Act.
- (ii) Ordinary risk is that sort of note whereby the railway company accepts limited liability. And stands liable for the loss, etc., till the proof of the care prescribed by law has been given.
- (iii) Owner's risk frees the railway company from the responsibilities in the manner and under the conditions laid down in the present risk note forms.

(VIII) The question of Tariff rates may not be, perhaps, within the province of the enquiry by your committee, but my Association cannot help touching it. A passing reference thereto will help to elucidate the point of view of my Association regarding risk notes in general.

The Tariff rates in prevalence are two in number : (a) ordinary rates, and (b) special reduced rates.

The former is recovered when the consignment is booked under the railway risk, while the latter is charged for the commodity booked under owner's risk. There is a marked difference between these two rates, the former are so high and they are, therefore, so rarely availed of that it may be well said to have been practically non-existent for all commercial purposes. Grain is always booked as an ordinary rate whatever may be the form of the risk note. Many of the railways have no special reduced rates for the grain or rice while they have been maintained by none. Tariff rates vary with the bulk quantity, and value of the consignment. In some cases they are abnormally high. In the opinion of my Association the consignment under ordinary risk as suggested should be carried at the special reduced rates, because the risk run by the railway company is limited and on taking of the statutory care it follows the owner. There ought not to be the premium for such care, the difference between the rates under the railway risk and the ordinary risk should be the insurance charges to cover all possible risk due to accidents. The tariff rates to be applied to the agreements

under the owner's risk should be as low as possible, because of the railway company being freed of the statutory care. Higher the rate greater the commerce is likely to be paralyzed.

(IX) My Association will now compile its remarks on the risk note forms A, B, C and H with which my Association is mainly concerned.

RISK NOTE FORM "A."

(a) This is intended to be used when articles are tendered for carriage either already in a bad condition or defectively packed as to be liable to be damaged, leakage or wastage in transit. It is clearer than crystal that one must abide by the consequences of the acts that are his own creation. So far nothing can be said against the object and the form of the risk note form. The whole trouble arises to what should be taken as the standard of bad condition and defective packing. It has been common practice with the railway staff to obtain such notes from traders who pass them out of sheer helplessness. There are no other carriers through whom the goods should be sent and the trader again cannot each time afford to be on cross-terms with the railway staff nor can he afford to allow his goods detained and exposed to all sort of risks at the railway yard till the matter is referred to the higher authorities who do not shrink at all to express opinions tainted with prejudice and partiality. The articles which are not likely to be in a bad condition or liable to leakage or wastage by defective packing seldom pass off without this risk note form. My Association, therefore, insists upon discontinuing it altogether the use of this risk note form in the case of cloth, yarn, cotton bales and other articles which, to the opinion of a man of ordinary prudence appear to be in a fit state of carriage. This will remove a source of constant harassment to these things. My Association, therefore, deems it necessary to delete the words "leakage and wastage" and the words at the end of the risk note form "and for any loss arising from the same" in all cases except that the articles are fluids. In all other cases the railway company should be freed only from responsibility as to the conditions in which the articles which are in bad conditions or defectively packed reach the consignee.

RISK NOTE FORM "B."

This is intended to be used when the sender elects to despatch at a "special reduced" or "owner's risk" rate articles or animals for which an alternative "ordinary" or "risk acceptance" rate is quoted in the Tariff. In this risk note the onus of proving wilful neglect or theft by the railway servants lies upon the party who alleges such wilful neglect or theft. The plaintiff's case falls unless it comes within the exceptions. It is impossible in the very nature of things for the plaintiff to prove affirmatively such facts and nine out of ten have failed. The evidence whether documentary or oral, whether of the railway police or of its servants lie within the reach of the railway company. If these persons are brought to the witness box they are sure to testify the facts which would go against the plaintiff, because of the natural partiality towards the railway company, while on the contrary it would not be hard for the railway company to prove the absence of wilful neglect, etc. Under these circumstances to expect of the plaintiff to gather evidence to win the case is to deny him the help of the Court of justice. Since the establishment of the Railway Police Department few cases have been heard detected. The railway company is always apt to make the reports of thefts after an unreasonable delay that the offenders might easily escape from punishment and the railway police are very slow in taking preventive action. The best course my Association is in a position to chalk out is to shift the onus on the railway company that it may be alert in exercising the proper care and caution. In this case the presumption ought to be in favour of the consignor rather than in favour of the railway company and the section should be worded accordingly.

The words "wilful neglect" should not pass without any criticism. It should exclude what would not be included therein because it was beyond the control or it could not be reasonably prevented by the railway company by taking proper care and caution. Accidental fires or robberies will easily come within the purview, but not such robberies which are the ultimate causes of gross and

wilful negligence. The proviso to the section should be appended in the following words :—

“ Wilful neglect excludes only those events and accidents over which the railway company had no control and which could not be reasonably prevented by the railway company by taking proper care and caution.” The liability of the railway company on a loss of a complete package or packages forming a part of the same consignment is an incentive to the railway staff to commit theft and pilferages. This can to a certain extent be checked by a strict supervision and deterrent punishment of the staff where cases of thefts are noticed. It is desirable in the interests of the railway company to insert the wordings “ liable only on a loss of a complete package or packages forming a part of the same consignment, but it leads to a very great mischief and the railway staff in order to evade the liability preserve with great care the coverings. A little of the consignment being an article for food or drink is likely to be damaged but in certain cases the damage is so high that it would be quite inequitable to relieve the railway company of the liability. Without the proof to the satisfaction. The merchants also should be prepared to bear a certain amount of risk in proportion to the concession allowed by the railway company. The onus of proof on the railway company is the only alternative to surmount of the difficulty.

RISK NOTE FORM “ C.”

This form can be easily done away with by having a good stock of rolling materials. If it is allowed to exist it should be very sparingly used and only under the pressing circumstances and for articles not subject to speedy theft.

RISK NOTE FORM “ H.”

This is an alternative to the risk note form “ B.” It is general in its form. The same remarks apply thereto *mutatis mutandis*.

(X) The prices of the articles for food and drink began to day by day multiply. This was attributed to the consequent loss to the mercantile community and to the demoralisation of the railway staff. The present state of affairs assumed the serious form as to arrest attention of the general public who, for the better of state of affairs raised such hue and cry that the Government was obliged to appoint a committee to investigate and to mitigate the wrongs. My Association submits that there will be no effective check on these unless the railway company is compelled to be more vigilant and watchful of the consignor's interest by following the policy of preventing from limiting its liability by any agreements which tend to lessen the statutory care of the goods required of it and which throw the burden of proving the causes of loss, etc., on the consignor to entitle him to hold the railway company liable otherwise it would result in removing any incentive to take even ordinary care of goods by the railway company. Goods are kept anywhere, handled in any manner, carried to destination at any time. None cares or deems it his duty to be careful about seeing that there is no loss, damage, or deterioration to the goods due to the neglect of an ordinary care.

Backing up the railway employees to commit theft and pilferages because of their knowledge that the owner would not be able to discharge the onus and his claim could not be entertained unless the loss was of the complete package. To evade the liability and the reproof from the higher authorities they are very careful to produce a body without flesh and blood.

(XI) To sum up briefly this Association submits that—

- (a) As under the reasons stated in the paragraphs 2 to 6 herein the railway company should not be allowed to limit its liability as a bailee under sections 151 and 152 of the Indian Contract Act that the efficiency of the standard of care they can be expected to take of the goods bailed as a public carrier might lessen.
- (b) As under the present state of affairs the railway clothed with such high powers that it is in a position to dominate the will of the trading classes, nothing should be done so as to add those powers that the domination be existed against them to their prejudice.

(c) There should be three kinds of agreements, *viz.* :—

(i) **Railway Risk.** Where the railway is held responsible for the loss, destruction or deterioration of the goods bailed from any cause whatsoever. A statutory form to the effect should be provided for.

Ordinary Risk. Where the railway has accepted the limited liability, *i.e.*, the liability under sections 151 and 152 of the Indian Contract Act. No form is needed for this.

(iii) **Owner's Risk.** Where the present risk note forms with the modifications suggested will be used.

(d) The Tariff rates will vary with the proportion of the risks borne. The rates for all the three classes of agreements should be as shown in the paragraph 6. This will safeguard the interest of the public without putting any undue strain or disadvantage to the railway company. To effectively check the appalling demoralisation made home in the railway subordinates certain measures shall have to be adopted. The railway will also endeavour to exercise that amount of care which the law requires of it and for preventing theft and pilferages by its staff.

(e) Risk Note " A " should be done away with so far as cloth, yarn, cotton bales, and such other articles which are always sufficiently packed are concerned. In other cases the alterations and the restrictions under suggestions may be carried out.

Risk Note Forms " B " and " H " should be so worded as to cast the onus of proof of the absence of wilful neglect and theft by railway servants on the railway company. The proviso as to wilful neglect should exclude any event or accident over which the railway company had no control or which could not be reasonably prevented by the railway company by taking proper care and caution. The suggestions are submitted in details.

NOTE.—A communication in identical terms was also received from the Merchants Serial No. 98. Association, Viramgam.

Dated the 7th July 1922.

Serial No. 99.

From—The Mercantile Association, Madhavpura, Ahmedabad,

To—T. B. SHISHAGIRI AYYAR, Esq., M.L.A., Chairman, the Railway Risk Note Revision Committee, Simla.

On behalf of and under the directions of the Mercantile Association of **Mercantile Association, Ahmedabad, I beg to place before you for favourable consideration by your Madhavpura, Committee, my Association's views regarding the revision of Railway Risk Ahmedabad. Notes.**

1. My Association has a membership of 261 firms, dealing in piecegoods principally manufactured at the mills in Ahmedabad, Viramgam and other places in Gujarat and Bombay. The interests represented by my Association are large inasmuch as all firms doing export business of textiles and piecegoods manufactured in Gujarat are members of the Association. The total number of bales booked by the members of the Association to different parts of India comes to about 3,00,000 of the aggregate value of Rs. 12 crores approximately.

2. My Association endorse the principle laid down in section 72 of the Railways Act, that as a general rule, railway companies should not be allowed to limit their responsibilities. In India each railway administration enjoys practically a monopoly of the carrying trade and have been in a majority of cases granted concessions and helped financially by the State at the cost of the general tax-payers. They should therefore primarily exist for the benefit of the tax-payer whether as a merchant or as a passenger. My Association submits that the guiding principles to be always kept in view is that any attempt to limit their responsibility ought not to tend to lower the standard

of their duty to the public or the standard minimum care which public carriers ought to be made to take of the goods handed over to them for carriage.

3. Of equal importance with what my Association has called the guiding principle is the fact that being corporate bodies with extensive finances and enjoying monopoly without any competition of public carriers of the same kind, railways are already in a position of advantage over the individual trader booking goods for carriage, and this natural domination should not be further supported as against the individual trader, by reducing their responsibility almost to a nullity in practice. An attempt to limit their responsibility must also rigidly safeguard the interests of the individual instead of driving him to recklessly accept any Risk notes, out of sheer helplessness.

4. My Association therefore urges that the railway administrations should not be allowed to limit their liabilities as bailees under sections 151-152, Indian Contract Act. Those sections sufficiently protect bailees and in view of what is stated in paragraphs 2 and 3 above, my Association is of opinion that there is no need for limiting the responsibilities of the railways, under sections 151-152, Contract Act. It will be seen that section 152 exonerates the bailees for responsibility from loss, destruction or deterioration if the standard of care prescribed in section 151 is taken. That section further leaves the bailor the liberty to enter into a special contract with the bailee to hold the latter liable for loss, destruction or damage, accruing in spite of and notwithstanding the amount of care prescribed by section 152 having been taken by him. It will be thus seen that section 125 has already imposed a limited responsibility on the bailee. It will not be every case of loss, destruction or deterioration for which the railway administration will be held liable. They can exonerate themselves by stating that they had taken the amount of care the law required, and the law provides for no extraordinary standard of care. The railway administrations have not provided for any forms of agreements whereby they would enter into the special contract as contemplated by section 152 under which a consignor can hold them liable for any loss, destruction or damage occurring in spite of the amount of care prescribed by section 151 having been taken by the railway administration. They have thus practically accepted the limited responsibility under section 152, the further reduction of which is neither necessary nor desirable in public interest. Even now therefore when they carry goods at what they call "Railway risk" they are not really speaking taking any risks and are virtually carrying the goods at "Owner's risk" because, it will be easily seen, that all that the railways are required to do is to take the amount of care prescribed by section 151 and when that is taken, the risk for any loss, destruction or deterioration is the owner's and not the railway's as the law stands. An attempt to reduce further the limited responsibility under section 152, Contract Act, therefore amounts to freeing the railway administrations from the consequences of failure to exercise the amount of care required of them in respect of the goods delivered to them for carriage. My Association is of opinion that the present risk notes as prepared do provide same exceptions but they are quite illusory and of practically no value as we hope to be able to show later on.

5. The general observations above indicate the policy my Association earnestly urges your committee to adopt in respect of the question of Railway Risk Notes. To carry out that policy my Association would suggest the following kind of risk notes :—

- (a) "Railway Risk."—This is not what is at present known as "Railway Risk," i.e., where the Railway Company holds itself responsible for loss, deterioration or damage from any cause whatever, and does not exonerate itself from liability by pleading the standard of care prescribed under section 151, Contract Act. In other words, this will be the "Special Contract" by the bailee contemplated by section 152, Contract Act. It is submitted that it will be open for railway administrations to enter into such contracts. Section 72 puts restrictions on limitations of responsibility and not on taking additional risks.
- (b) Ordinary or Owner's Risk Class 1, i.e., where the responsibility of the railway administration is what is provided in section 152, Contract Act, as the bailee's responsibility in the absence of a special contract to the contrary. The railway administration will not be held liable, under these notes, for any loss, destruction or

deterioration, if they have taken the standard care in the carriage of goods. This is what is at present misnamed Railway Risk; the railway administration in fact runs no risk but the owner does run all the risks of the goods being lost, destroyed or deteriorated in spite of absence of negligence on the part of the railway administration. No special note is necessary for this. The absence of any note will mean the ordinary statutory liability of the railway administration.

- (c) Owner's Risk Class II, i.e., where the railway administration is free from responsibility in the manner and under the conditions laid down in the present Risk Notes.

The tariff rates chargeable will be of course different when goods are despatched under different agreements as to the risks.

6. The question of tariff rates may perhaps be deemed out of the scope of inquiry by your committee. But a passing reference to it will help to elucidate the point of view of my Association regarding Risk Notes in general. In the opinion of my Association the present "special reduced" rate should apply as ordinary traffic rates in cases of agreement Owner's Risk, Class I. This follows as a corollary from what has been stated previously. In the proposed Owner's Risk, Class I, the railway administration runs absolutely no "Risk" properly so called. It is however charged with the duty of taking the prescribed care and when that is done, all the "Risk" properly so called is the owners. There ought not to be a premium for taking the statutory care of the goods. It is the minimum which has to be expected of all railway administrations. The present "ordinary" tariff is so high and it is therefore so rarely availed of that it may well be said to have been non-existent for all commercial purposes. Such tariff may be applied to what is proposed in the foregoing paragraph as the real Railway Risk agreement. Even in that case too, the rate will be very high. The natural difference between those rates and Owner's Risk, Class I, should be the insurance charges to cover all possible risks of accidental fires, theft, robbery, etc., and therefore the rate for Railway Risk booking should be the rate for the Owner's Risk, Class I, plus the insurance charges and nothing more. In cases where merchants desire to book goods at their own risks freeing the railway administration for consequences of loss, destruction or deterioration from any cause whatever, i.e., under the conditions in the present risk notes agreements B. and H. the tariff rates should be very much lower as the railway administration is practically relieved from taking even the statutory care of the goods.

7. It is relevant here to advert to the present state of things which will go to show that it is necessary in public interests to adopt the policy and therefore the kinds of Risk Notes and the tariff rates as suggested above by my Association. The present state of things is the outcome in the main of the combination of the following factors:—

- (1) The difference in the "Ordinary" and the "Special" reduced rate is so great as to prevent merchants from taking advantage of the "Ordinary" rates. This places the railway administration in a position of undue and unfair advantage over the trader to free itself practically not only from all the risks whatever but also from the consequences of its own want of statutory care.
- (2) The present "special reduced" rate Risk Note practically absolves the railway administration from all responsibility, and the exceptions provided are merely on paper and of no practical value. They throw on the trader the burden of proving a set of circumstances which he can never do.

This results in:—

- (a) Removing any incentive to take even ordinary care of goods by the railway administration, goods are kept any where, handled in any manner, taken to destination at any time. None cares or deems it his duty to be careful about seeing that there is no loss, damage or deterioration to the goods due to neglect of ordinary care.
- (b) Encouraging railway subordinates to carry on all sorts of thefts and pilferages as they know that the owner of goods can never discharge the burden of either proving "wilful neglect" or theft by railway servant nor can he claim any thing so long as there is no loss of a "complete consignment" or "one or more complete packages forming part of a consignment."

The consequent loss to the mercantile community and also to the general public by proportionate rise in prices the demoralisation of railway staff and in their train of mercantile community have assumed such serious proportion as to arrest attention of all thinking and patriotic men. My Association submit that there will be no effective check on these unless railway administrations are compelled to be more vigilant and watchful of the consignor's interests by following the policy of preventing them from limiting their liability by any agreements which tend to lessen statutory care of goods required of them and which throw the burden of proving the causes of loss, deterioration, destruction on the consignor to entitle him to hold the railway administration liable.

8. Coming to the question of Risk Notes at present in use, my Association will compile its remarks to Risk Note Forms A, B and H, with which my Association is mainly concerned.

As regards Risk Note Form A.

This is intended to be used when articles tendered for carriage are either already in bad condition or so defectively packed as to be liable to damage, leakage or wastage in transit. There is not much to be said against the object and the form of this Risk Note. The object is that the railway administration should not be held liable for loss which is brought about by circumstances of the owners creation. But the whole trouble arises as to what should be taken as the standard of "bad condition" and "defective packing." It has become a common practice with the railway staff to obtain such notes from merchants who pass them out of sheer helplessness. There are no other carriers through whom the goods could be sent and the trader again cannot each time afford to be on cross terms with the railway staff nor can he afford to allow his goods detained and exposed to all sorts of risk at the railway yard till the matter is referred to the District Traffic Superintendent and decided by the Inspector. This type of risk note is obtained for even securely packed cloth bales sent to the station directly from the mills. Generally cloth bales are well packed with iron strips to stand the handling in transit. The risk note, moreover seems to have been primarily intended for perishable and other fluid articles such as vegetables, ghee, etc. Cloth is not likely to be "in bad condition" or "liable to leakage or wastage" by defective packing. It is liable to damage no doubt. My Association therefore urge upon discontinuing altogether the use of Risk Note Form A, in case of cloth, yarn and cotton bales, as the risk note was never intended for such articles and ordinarily such bales are sufficiently well packed. This will remove a source of constant harassment to cloth yarn and cotton merchants. My Association would further urge the deletion of the words "leakage" and "wastage" and the words at the end of the risk note "and for any loss arising from the same" in all cases and where articles are fluids the words should be "and for any loss arising from such leakage or wastage. In all other cases the Railway Administration should be freed only from responsibility as to the conditions in which the articles, which are in bad condition or defectively packed reach the consignee. This risk note is a source of amount of loss to merchants due to pilferages and thefts by the much-demoralised railway staff. A strict supervision and deterrent punishment of the staff where cases of harassment are noticed are also necessary to improve matters.

Risk Note Forms B and H.

The views of my Association as regards these have been generally stated above. In these risk notes the proviso should be so worded as to show clearly that what is intended to be excluded from the true "wilful neglect" is nothing but an accident. It should be as follows:—

"Provided the term "wilful neglect" shall not be held to include any event or accident over which the railway administration had no control or which could not be reasonably prevented by the railway administration by taking proper precautions."

Accidental fires will come under the proviso, so also accidental robberies. But where robberies are taking place very often, the defence of robbery should not be open to the railway administration.

Again at present the burden lies on the owner to prove that his case comes within the exception. It is impossible in the very nature of thing for the owner to prove affirmatively "wilful neglect" or "theft by" railway servant. The

evidence (documentary as well as oral) whether it be of the railway police or servant, is all with the railway administration. The journey is very long and the goods are lying with the railway for days and days together. In these circumstances, no merchant can ever hope to prove that his case falls within the exceptions provided in the risk note. On the other hand, the railway administration has all the facility of proving absence of "wilful neglect" or "theft by" its servants. The risk note should be therefore, so framed as to throw the burden of proving absence of "wilful neglect" or "theft by" its servants on the railway administration. My Association would suggest the following phraseology:—
Harmless and free from responsibility for any loss destruction or deterioration of or damage to the said consignment from any cause not due to the wilful neglect of the railway administration or to the theft by or to the wilful neglect of its servants, transport Agents.....consignment, provided such wilful neglect or theft will be *prima facie* presumed to be the cause of any loss, destruction, etc., which may occur and provided further the true "wilful neglect" shall not be held to include..... etc., (as suggested above).

9. To sum up briefly my Association submits that:—

(a) As railways enjoy a monopoly of carrying trade without competition, nothing should be done to lessen the standard of duty they owe to the public and the standard of care they ought to take of goods as public carriers.

(b) As railways are already, by their very position, in a position to dominate the individual trader, nothing should be done to increase that dominance to the prejudice of the individual trader.

(c) Even at present under the ordinary law railways do not undertake any "risk" property so called. What is known as "Railway Risk" is really owner's risk. There should be, therefore, three kinds of agreements, *viz.*:—

(i) Railway Risk.—Where railways in addition to the ordinary liability as bailee also accept liability as insurers. A form of note should be provided for this.

(ii) Ordinary or Owner's Risk, Class I.—Where the railways undertake the ordinary statutory liability under section 72, Railway Act. No form of risk is necessary for this.

(iii) Owner's Risk, *i.e.*, where the present risk note forms B. and H. with the modification suggested by my Association will be used.

(d) There should be different tariff rates for the above three kinds of agreement. The present ordinary rate is too high. The present "special reduced" may be kept for what is described owner's risk, Class I, above. That rate with an addition for insurance may be charged for railway risk properly so called, while that rate should be substantially reduced for owner's risk, Class II.

(e) The above will safeguard the interests of the trader without putting any undue strain or disadvantage to the railway who will have to be on the alert for exercising the care of goods, law expects of them and for preventing thefts and pilferages by its staff. The consequent saving to the merchants and to the general tax-payers by reduction of prices will be substantial and it will also effectively check the appalling demoralisation of the railway servants as a class.

(f) Risk Note A. should be done away with so far as cloth yarn and cotton bales are concerned. In other cases the amelioration and restrictions suggested may be carried out.

(g) Risk Notes B and H should be so framed as to cast the burden of proof of absence of wilful neglect and theft by railway servants on the railway administration. The proviso as to "wilful neglect" not including fires, etc., should be so amplified as to make it clear that only accidents are included in the proviso. The suggestions are submitted above in details.

Serial No. 100.

Letter No. 140, dated 11th July 1922.

From—B. K. GARUDACHAR, Esq., Chairman, Mysore Chamber of Commerce
Bangalore,

To—The Assistant Secretary, Railway Board, Simla.

Mysore Cham-
ber of Com-
merce,
Bangalore.

In reply to your communication No. 505-T.-21, dated the 22nd May 1922, inviting the opinion of this Chamber on the form, construction and application in practice of the Railway Risk Notes in use at present, I am desired by my Committee to submit the following remarks on the subject of your terms of reference :—

1. The Chamber is of opinion that it would be conducive to the best interests of both the General Public and the Railway Administration to do away altogether with the present difference in rates in respect of goods, sent by Owner's Risk and Railway Risk respectively. As a matter of fact, the Railway Administration does not in practice regulate its degree of care in accordance with the difference in the rates levied. Owing to the great difference between the two rates, the mercantile community are more or less obliged to despatch the greater portion of their goods at Owner's Risk and not at Railway Risk. The result is that the complete protection afforded to the Railway Companies by the peculiar wording of the Owner's Risk Notes is often a direct incentive to the unscrupulous servants of the Railway Company to tamper with impunity the articles consigned, to the serious detriment of the consignor and consignee.

My Committee is therefore of opinion that there should be one uniform and reasonable rate for the carriage of goods. If this suggestion is adopted, there will be no need for any special Risk Note at all and the responsibility of the Railway Administration for the loss, destruction or deterioration of animals or goods delivered to it for carriage by Railway will be as enacted in Sub-section (1) of Section 72 of the Indian Railways Act.

Sub-section (2) of Section 72 will have to be in the above circumstances repealed or otherwise modified.

In case, the above suggestion is not accepted, and it is thought advisable for the present to merely modify the form and tenor of Owner's Risk Notes (B and H), my Committee is of opinion that the said Notes should be altered as indicated in the following manner.

At present, the Railway Company is made liable only in the case of *loss of a complete consignment*, and this too, when the loss is due to the *wilful neglect* of the Railway Administration or to theft by or the wilful neglect of its servants.

For loss, destruction, or deterioration or damage to the consignment from any cause whatsoever except as stated above, the Railway Company is not liable. This is indeed a great hardship to the Consignor, who has to suffer under two serious disabilities. One is that the entire onus of proof in a matter the facts relating to which are particularly within the knowledge of the Railway Administration is made to rest on the Consignor. The case law on the subject shows that there is hardly any case in which this onus was or could be satisfactorily discharged and consequently the Railway Company, though really at fault, always escapes liability thus leading to perversion of justice and fair play.

Secondly, there is no provision for the grant of compensation (a) in cases of *destruction, deterioration or damage* either *in whole or in part* and (b) in cases of *partial loss*. It is therefore absolutely necessary to increase the rights and privileges of the Consignor by a suitable alteration of the present form of the Owner's Risk Note forms (B and H). In the opinion of the Chamber a

*Serial No. 100.

Risk Note of the form enclosed* here-
with will be the minimum revision

urgently called for.

My Committee also desire me to submit that when once the plaintiff has proved the loss, destruction, deterioration or damage either in whole or in part to his goods, and the circumstances of the case warrant and justify the inference of negligence or crime on the part of the Railway Administration, the burden of proof must shift to the defendant Company and unless the presumption of negligence or crime is successfully and completely rebutted, the Railway Company must be made liable.

.....STATION.

Serial No. 101.

.....1922.

FORM.

SERVANTS OF INDIA SOCIETY'S
BRANCH LIBRARY
BOMBAY

WHEREAS the consignment of.....
tendered by me—us, per Forwarding Order No.....of this date for
despatch by the Railway Company, Limited, or their transport agents or carriers
to.....Station, as for which I—we have received Railway Receipt
No.....of the same date, is charged at a special reduced rate of
Rs.....instead of at the Ordinary Tariff rate of Rs.....charge-
able for such consignment, I—we the undersigned, do, in consideration of such
lower charge, agree and undertake to hold the said Railway Company and all
other Railway Administrations working in connection therewith, and also all
other transport agents or carriers employed by them, respectively, over whose
Railways or by or through whose transport Agency or Agencies the said goods or
animals may be carried in transit from.....Station to.....
Station harmless and free from all responsibility for any *loss, destruction or
deterioration or damage either in whole or in part is due to the neglect of the
Railway Administration or theft by or neglect of its servants, transport agents
or carriers* employed by them before, during and after transit over the said
Railway or other Railway lines working in connection therewith or by any other
transport agency or agencies employed by them respectively for the carriage
of the whole or any part of the said consignment, provided the term "*neglect*"
*be not held to include fire or any other act of God or Vis Major and also
provided "negligence" or "theft" need not be actually proved but may be
inferred from the circumstances of the case.*

Letter No. T.-1682, dated Calcutta, the 14th July 1922.

Serial No. 102.

From—MRSRS. TURNER, MORRISON AND COMPANY, Limited, Managing Agents, the
Shalimar Tar Distillery and Waterproof Manufacturing Company, Limited,To—The Secretary to the Government of India, Railway Department (Railway
Board), Simla.

We have to request you to place the following remarks on the subject of **Messrs. Turner, Morrison & Co. Limited, Calcutta.**
Risk Notes for despatches made in tank wagons, before the Risk Note Committee. This Company receives its supplies of tar in tank wagons belonging to the East Indian Railway and Bengal Nagpur Railway.

In the case of despatches in tank wagons, the Railway supplies the package, in which the goods are sent, and the goods are not in the ordinary sense liable to damage, but only to loss through accident to the wagon or fire, yet the Railways repudiate liability for loss in transit of tar sent at Owner's Risk unless a complete wagon load is lost. The wagons are locked or otherwise so fastened that pilferage is impossible.

We suggest that a separate form of risk note should be applicable to goods despatched in tank wagons.

Letter No. T.-538, dated Bombay, the 14th June 1922.

Serial No. 103.

From—J. K. MENA, Esq., M.A., Secretary, Indian Merchants' Chamber and Bureau,

To—The Secretary, Railway Board, Railway Risk Notes Committee, Simla.

In continuation of my letter No. T.-505 of the 2nd instant, (Serial No. 89), **Indian Merchants' Chamber and Bureau, Bombay.**
I am directed to send to you herewith an original form of Railway Receipt (Serial No. 105), as it is in force on Midland Railway in England. My Committee are informed that this form of note is not considered as satisfactory by the majority of traders in the United Kingdom. I am also enclosing a copy of the Standard terms and conditions of carriage which are being submitted by the Railway Companies to the Railway Rates Tribunal (Serial No.

104). In the opinion of the traders, however, these proposals are unsatisfactory and Mr. J. H. Balfour Browne, K.O., submitted a new clause (Serial No. 103) before the Rates Advisory Committee on the 20th May 1920. It will be observed that in this clause emphasis is laid upon the suggestion that "it shall lie upon the Company to prove that the same (loss) was not caused by such theft or pilferage, etc.," and that "where loss arises from the act of God or the inherent vice or natural deterioration of the goods, the Company should prove that they have used all reasonable foresight and care, etc." My Committee had asked for all this literature from England and I am sending it on to you in the hope that it might be useful in the solution of the question which is at present being considered.

Serial No. 104.

Association of British Chambers of Commerce.

OWNER'S RISK AND COMPANY'S RISK.

Clauses proposed by Mr. J. H. Balfour Browne, K.C., at the Enquiry before the Rates Advisory Committee into the General Revision of Railway Rates and charges, 20th May 1920.

Owner's Risk Clause.

Where a railway company, either alone or jointly with any other railway company, undertake to carry, convey and deliver by railway, or by railway and canal or road, any goods at a rate of less amount than the ordinary or company's risk rate, in consideration of the company or any other company or person over whose railway canal such goods may pass being relieved by any of their liabilities as carriers or conveyors of such goods, it shall not be lawful for the company by means of any conditions contained in a special contract for the carriage, conveyance and delivery of the goods, or any public or other notice, or otherwise, to relieve the company or any such other company or person of liability for loss arising from theft or pilferage by the servants of the company or others, or their wilful misconduct, or the failure or neglect of the company or any such other company or person to carry or convey and deliver the goods with all reasonable care and expedition: but the company, and in respect of the carriage or conveyance and delivery of the goods over any part of their railway or canal, each such other company or person, shall remain liable for such loss: and where any loss arises it shall lie upon the company to prove that the same was not caused by such theft or pilferage, misconduct, or failure or neglect as aforesaid.

The term "goods" in this clause includes merchandise, minerals and animals, and all other articles and things of every description.

Company's Risk Clause.

Where a railway company, either alone or jointly with any other railway company, in consideration of the payment of an ordinary or company's risk rate, undertake to carry or convey by railway, or by railway and canal or road, any goods, the company shall be deemed to be insurers of, and shall be liable for the loss, however, caused, of the whole or any part of, or any injury done to such goods in the receiving, forwarding, and delivering thereof, and for any and every other loss or injury arising directly out of such receiving, forwarding and delivery which the owner of such goods may sustain, excepting only such loss or injury as may arise from the act of God or the King's enemies, or the inherent vice or natural deterioration of such goods.

Provided that where loss arises from the act of God or the inherent vice or natural deterioration of the goods, and the company have failed to prove that they have used all reasonable foresight and care by the exercise whereof such loss could have been prevented, the company shall not be relieved from liability for such loss by reason of the occasion thereof.

The term "goods" in this clause includes merchandise, minerals and animals, and all other articles and things of every description.

NOTE.—The above clause is submitted subject to the Carriers Act, 1830, being amended so as to remove ambiguities and bring it in accordance with modern requirements. The clause is intended to impose upon the company the liability of a common carrier for loss or damage, and also liability for every other loss or injury which the owner of the goods may directly suffer, e.g., loss from misdelivery or detention.

CONSIGNMENT NOTE.

MIDLAND RAILWAY.

Pro. No. _____

G. B. 160.
B 28-100 L-17.

NUMBER OF THIS NOTE.

To the Midland Railway Company _____ Station, _____ 19 _____

Receive and forward, as per address and particulars on this Note, the undermentioned Goods, on the conditions stated on the other side.

This Agreement shall be deemed to be separately made with all Companies or persons who shall be carriers for any portion of the transit (herein respectively referred to as the Company) and to include the conditions endorsed hereon.

Signature of Sender or his Representative _____ Address _____

Senders must fully and accurately describe the contents of packages and must also clearly state whether carriage is payable by Sender or Consignee.

Owner and Wagon No.	To what station to be sent.	CONSIGNEE.		No. of Articles.	Description of Goods and Marks.	WEIGHT.				Charges Paid on.			Who pays the Carriage.	
		NAME.	FULL ADDRESS.			T.	C.	Q.	lb.	£	s.	d.		

Goods which may be required "To wait order" at any particular Station must be so consigned on this Note.

Name of Company's Drayman bringing traffic in _____

Serial No. 105.

1.—The Company shall not whether the carriage be by land or sea be liable for loss or injury (from whatever cause arising) of or to any articles or property described in the *Carriers' Act, 1830* contained in any parcel or package when the value of such articles or property exceeds £10 unless the nature and value thereof be declared and an increased charge over and above the charge for carriage be paid as compensation for the risk incurred.

2.—The Company shall not be liable for loss damage or delay of or to animals or goods booked through for carriage partly by railway or canal and partly by sea from the act of God the King's enemies fire accidents from machinery boilers and steam and all and every other dangers and accidents of the seas rivers and navigation of whatever nature or kind. In respect of animals or goods intended to be carried by Shipping Companies or other Carriers by Sea the Company are authorised as agents for the sender to contract for such carriage upon the terms of any Bill of Lading or other conditions required by the Carriers by Sea.

3.—The Company shall not be liable for loss from or for damage or delay to a consignment or any part thereof unless a claim be made in writing within three days after the termination of the carriage of the consignment or any part thereof or in the case of traffic to places outside the United Kingdom the termination of the carriage by a Railway Company of the United Kingdom nor for non-delivery of a consignment unless a claim be made in writing within fourteen days after its receipt by the first contracting Company.

4.—When the Company perform the cartage the place of collection or delivery shall be the usual place of loading or unloading the goods into or from the road vehicles.

5.—The Consignor or Consignee shall provide at his own risk and expense any power plant and labour (in addition to the Company's carman) required for loading or unloading road vehicles.

6.—The transit shall (unless otherwise determined) be deemed to be at an end (a) in the case of goods to be carted by the Company when they are tendered at the place of delivery as defined in Condition 4 or (b) in the case of goods not to be carted by the Company or to be retained by the Company awaiting order at the expiration of 24 hours after notice of arrival is delivered to the Consignee or at his address or should be so delivered in due course of post or where the address of the Consignee is not known at the expiration of 24 hours after the arrival of the goods at the place to which they are consigned or (c) in the case of goods consigned to a destination beyond the limits of the Company's delivery when they have been transferred to another carrier in the usual course for conveyance or delivery in which last-mentioned case the Company shall cease to be liable for any subsequent loss damage misconveyance misdelivery delay or detention arising from any cause whatsoever.

7.—After the termination of the transit [as defined in Condition 6 (a) and (b)] the Company will hold the goods as warehousemen subject to the usual charges.

8.—The Company will charge in accordance with their scale for the time being for the detention of their trucks road vehicles or sheets or for the occupation of their Sidings by the trucks of private owners (a) before or after transit and (b) during transit in consequence of the Consignee not being ready to accept delivery.

9.—All goods delivered to the Company will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon or expenses in connection with such goods (including charges for warehousing or keeping such goods for detention of trucks road vehicles or sheets or for siding rent during the exercise of such lien) and all goods delivered to the Company under this consignment note or otherwise will be received and held by them subject to a general lien for any moneys due to them from the owners of such goods upon any account and in case any such lien is not satisfied within a reasonable time from the date upon which the Company first gave notice to the owners of the goods of the exercise of the same the goods may be sold by the Company by auction or otherwise and the proceeds of sale applied to the satisfaction of every such lien and expenses and charges.

10.—Perishable articles (a) refused by the Consignee or (b) not taken away from the place to which they are consigned within a reasonable time after arrival or (c) insufficiently addressed or (d) not delivered in consequence of strike or riot may be sold without any notice to Sender or Consignee and payment or tender of the net proceeds of any such sale after deduction of freight charges and expenses shall be equivalent to delivery.

11.—The Company shall not be liable for (a) loss of market (b) indirect or consequential damages (c) loss or delay due to inadequate or incorrect address or imperfect labelling (d) loss or damage caused by insufficient or improper packing (e) loss damage or delay caused by or arising out of any strike or riot (f) loss damage or delay caused by Consignee not accepting delivery.

12.—The Company shall not be liable for loss damage or delay of or to goods or a trader's truck or sheet caused by a defect in a truck not belonging to the Company unless proved to be due to the negligence of the Company's servants.

13.—The sender will be liable for all charges for carriage or otherwise including the detention of trucks road vehicles or sheets before during or after transit without prejudice to the Company's rights against the Consignee or other person.

14.—The charges for traffic that loses weight through drainage evaporation or any cause beyond the Company's control shall be calculated upon the weight of the goods when received by the Company.

15.—The Conditions and Regulations set out in the Company's Rate Books applicable to the goods carried shall be deemed to be incorporated herein.

16.—The Company's servants have no authority to vary this Contract.

DERBY;

January 1st 1917

W. N. BANCROFT, Secretary.

Letter No. 53, dated 27th June 1922.

Serial No. 106.

From—The Honorary Secretary, the Central Provinces and Berar Mining Association,

To—The Assistant Secretary, Railway Board, Simla.

I am obliged for your letter No. 505-T.-21, dated the 22nd May 1922 and in reply, have the honour to state that as the consignee has no facility for obtaining proof in a claim of compensation arising out of the loss of goods entrusted to a Railway for carriage the association is of opinion that the onus of proof should lie with the Railway Company.

The Central Provinces and Berar Mining Association.

Letter dated the 25th July 1922.

Serial No. 107.

From—The Indian Piece Goods Association,

To—The Chairman, The Railway Risk Note Revision Committee.

In continuation of our printed representation,* dated the 20th May last, and with reference to the remarks of the

*Serial No. 71.

Indian Piece Goods Association, Calcutta.

Railway deputation that waited on the Committee in Simla last month, we beg to make the following further observations :—

(1) The Railway deputation made a proud statement that there were as many dishonest merchants as dishonest railway servants. This may or may not be so but the point is that the Railways have got to show that dishonest merchants have put in false claims in the past and tried to make or did make money out of railways which they (merchants) did not lose through them (railways). On the other hand the merchants have proved that they have lost total or part consignments while in railway transit and recovered no compensation from the railways for such losses. In the case of our Association we submitted a list showing a few of the specific instances and almost every Association or a great majority of the merchants can give similar specific instances. So that the merchants' side of the case that they suffered and do suffer losses in respect of goods entrusted to railways is proved whereas the railway side of the case that there are dishonest merchants remains to be proved.

(2) As to the onus of proof, in reply to the statement that if the merchants asked of the railways, every information would be given to them we beg to say that this is not done so far and we will proceed to demonstrate this :—

(a) In a letter, dated 21st December 1921, one of the merchants wrote to the Eastern Bengal Railway's Traffic Manager as follows :—

“ We shall be highly obliged if you will kindly give us the full particulars as to how the loss occurred, on what date, at which station together with the number of wagon from which the same was detected.”

Now we would request the Risk Note Revision Committee to take particular notice of the reply that the said railway Traffic Manager gave in his letter No. C.G.A.-1724-21-D., dated 10th January 1922 :—

“ The information asked for is immaterial to you as consignee.”

And yet the onus of proof, of when the loss occurred, lies on the consignee. Will the railways say how the consignee can prove that there was or was not negligence on the part of the railways when simple information, like that asked for above, is denied to them ?

(b) In reply to a similar inquiry made of the East Indian Railway's Claim Superintendent by the same merchant, he received the following reply. (*Vide* his letter No. C.K.-1180-21 of 16th January 1922.)

1.—The Company shall not whether the carriage be by land or sea be liable for loss or injury (from whatever cause arising) of or to any articles or property described in the *Carriers' Act, 1830* contained in any parcel or package when the value of such articles or property exceeds £10 unless the nature and value thereof be declared and an increased charge over and above the charge for carriage be paid as compensation for the risk incurred.

2.—The Company shall not be liable for loss damage or delay of or to animals or goods booked through for carriage partly by railway or canal and partly by sea from the act of God the King's enemies fire accidents from machinery boilers and steam and all and every other dangers and accidents of the seas rivers and navigation of whatever nature or kind. In respect of animals or goods intended to be carried by Shipping Companies or other Carriers by Sea the Company are authorised as agents for the sender to contract for such carriage upon the terms of any Bill of Lading or other conditions required by the Carriers by Sea.

3.—The Company shall not be liable for loss from or for damage or delay to a consignment or any part thereof unless a claim be made in writing within three days after the termination of the carriage of the consignment or any part thereof or in the case of traffic to places outside the United Kingdom the termination of the carriage by a Railway Company of the United Kingdom nor for non-delivery of a consignment unless a claim be made in writing within fourteen days after its receipt by the first contracting Company.

4.—When the Company perform the cartage the place of collection or delivery shall be the usual place of loading or unloading the goods into or from the road vehicles.

5.—The Consignor or Consignee shall provide at his own risk and expense any power plant and labour (in addition to the Company's carman) required for loading or unloading road vehicles.

6.—The transit shall (unless otherwise determined) be deemed to be at an end (a) in the case of goods to be carted by the Company when they are tendered at the place of delivery as defined in Condition 4 or (b) in the case of goods not to be carted by the Company or to be retained by the Company awaiting order at the expiration of 24 hours after notice of arrival is delivered to the Consignee or at his address or should be so delivered in due course of post or where the address of the Consignee is not known at the expiration of 24 hours after the arrival of the goods at the place to which they are consigned or (c) in the case of goods consigned to a destination beyond the limits of the Company's delivery when they have been transferred to another carrier in the usual course for conveyance or delivery in which last-mentioned case the Company shall cease to be liable for any subsequent loss damage misconveyance misdelivery delay or detention arising from any cause whatsoever.

7.—After the termination of the transit [as defined in Condition 6 (a) and (b)] the Company will hold the goods as warehousemen subject to the usual charges.

DERBY;

8.—The Company will charge in accordance with their scale for the time being for the detention of their trucks road vehicles or sheets or for the occupation of their Sidings by the trucks of private owners (a) before or after transit and (b) during transit in consequence of the Consignee not being ready to accept delivery.

9.—All goods delivered to the Company will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon or expenses in connection with such goods (including charges for warehousing or keeping such goods for detention of trucks road vehicles or sheets or for siding rent during the exercise of such lien) and all goods delivered to the Company under this consignment note or otherwise will be received and held by them subject to a general lien for any moneys due to them from the owners of such goods upon any account and in case any such lien is not satisfied within a reasonable time from the date upon which the Company first gave notice to the owners of the goods of the exercise of the same the goods may be sold by the Company by auction or otherwise and the proceeds of sale applied to the satisfaction of every such lien and expenses and charges.

10.—Perishable articles (a) refused by the Consignee or (b) not taken away from the place to which they are consigned within a reasonable time after arrival or (c) insufficiently addressed or (d) not delivered in consequence of strike or riot may be sold without any notice to Sender or Consignee and payment or tender of the net proceeds of any such sale after deduction of freight charges and expenses shall be equivalent to delivery.

11.—The Company shall not be liable for (a) loss of market (b) indirect or consequential damages (c) loss or delay due to inadequate or incorrect address or imperfect labelling (d) loss or damage caused by insufficient or improper packing (e) loss damage or delay caused by or arising out of any strike or riot (f) loss damage or delay caused by Consignee not accepting delivery.

12.—The Company shall not be liable for loss damage or delay of or to goods or a trader's truck or sheet caused by a defect in a truck not belonging to the Company unless proved to be due to the negligence of the Company's servants.

13.—The sender will be liable for all charges for carriage or otherwise including the detention of trucks road vehicles or sheets before during or after transit without prejudice to the Company's rights against the Consignee or other person.

14.—The charges for traffic that loses weight through drainage evaporation or any cause beyond the Company's control shall be calculated upon the weight of the goods when received by the Company.

15.—The Conditions and Regulations set out in the Company's Rate Books applicable to the goods carried shall be deemed to be incorporated herein.

16.—The Company's servants have no authority to vary this Contract.

W. N. BANCROFT, *Secretary*

Letter No. 53, dated 27th June 1922.

Serial No. 106.

From—The Honorary Secretary, the Central Provinces and Berar Mining Association,

To—The Assistant Secretary, Railway Board, Simla.

I am obliged for your letter No. 505-T.-21, dated the 22nd May 1922 and in reply, have the honour to state that as the consignee has no facility for obtaining proof in a claim of compensation arising out of the loss of goods entrusted to a Railway for carriage the association is of opinion that the onus of proof should lie with the Railway Company.

The Central Provinces and Berar Mining Association.

Letter dated the 25th July 1922.

Serial No. 107.

From—The Indian Piece Goods Association,

To—The Chairman, The Railway Risk Note Revision Committee.

In continuation of our printed representation,* dated the 20th May last, and with reference to the remarks of the Indian Piece Goods Association, Calcutta.

*Serial No. 71.

Railway deputation that waited on the Committee in Simla last month, we beg to make the following further observations :—

(1) The Railway deputation made a proud statement that there were as many dishonest merchants as dishonest railway servants. This may or may not be so but the point is that the Railways have got to show that dishonest merchants have put in false claims in the past and tried to make or did make money out of railways which they (merchants) did not lose through them (railways). On the other hand the merchants have proved that they have lost total or part consignments while in railway transit and recovered no compensation from the railways for such losses. In the case of our Association we submitted a list showing a few of the specific instances and almost every Association or a great majority of the merchants can give similar specific instances. So that the merchants' side of the case that they suffered and do suffer losses in respect of goods entrusted to railways is proved whereas the railway side of the case that there are dishonest merchants remains to be proved.

(2) As to the onus of proof, in reply to the statement that if the merchants asked of the railways, every information would be given to them we beg to say that this is not done so far and we will proceed to demonstrate this :—

(a) In a letter, dated 21st December 1921, one of the merchants wrote to the Eastern Bengal Railway's Traffic Manager as follows :—

“ We shall be highly obliged if you will kindly give us the full particulars as to how the loss occurred, on what date, at which station together with the number of wagon from which the same was detected.”

Now we would request the Risk Note Revision Committee to take particular notice of the reply that the said railway Traffic Manager gave in his letter No. C.G.A.-1724-21-D., dated 10th January 1922 :—

“ The information asked for is immaterial to you as consignee.”

And yet the onus of proof, of when the loss occurred, lies on the consignee. Will the railways say how the consignee can prove that there was or was not negligence on the part of the railways when simple information, like that asked for above, is denied to them ?

(b) In reply to a similar inquiry made of the East Indian Railway's Claim Superintendent by the same merchant, he received the following reply. (*Vide* his letter No. C.K.-1180-21 of 16th January 1922.)

"I have already informed you that the railway company is protected from the loss in this case in terms of the risk note held in this case and I regret I cannot furnish you with any other particulars."

It is quite clear from the above reply that the merchants do not get any information from the railways. All that was asked of the East Indian Railway was where and how the loss occurred and the number of wagon from which the loss was detected. But because the railway company held a risk note they refused to furnish the consignee with any particulars. This is the way the merchants are treated when they ask the railways for simple information in respect of goods which the railways took over as carriers, received freight thereon and lost, and yet the railway representatives leave such a bold statement before the Risk Note Revision Committee that merchants are or can be given every particulars in respect of losses.

(c) As to police reports, it is impossible for the merchants to get a copy, and the information that railways give is very vague. As an instance we would quote the following from a letter No. C.-6083-21 of 1st December 1921 from the Traffic Manager of the East Indian Railway. The railways deliberately refuse to furnish the merchants with a copy of the police report and yet the railway is public property and the railway police is maintained out of public revenue (some of which is the revenue of railways worked by the Indian Government and the balance is part and parcel of Government expenditure of administration which is also public expenditure out of public revenue).

"I beg to say that the loss was due to a running train theft north of Burdwan and though the police made inquiries they have failed to detect the culprits. I am sorry I am unable to send you a copy of the police report which is a confidential document."

If the said Railway Traffic Manager was correct in his statement that "the police made inquiries and failed to detect the culprits" there can be nothing confidential in the police report and the very fact, that the railway Traffic Manager does not dare to give the merchants copy of the police report, goes to show that there must be something in the police report which the railways do not want the merchants to see and yet it is expected that the merchants must prove that the loss occurred through the negligence of the railway administration or its servants or was due to theft by railway servants. Seeing that the railways decline to give simple particulars to consignees and do not give them copies of the police reports, the only fair course open is that instead of the onus of proof lying on the consignees the railways should be required to prove that the loss was not due to their negligence or theft by their servants. Even in Robertson's report on railway administration the recommendation was that the onus of proof will lie on railways.

3. We shall place before the Railway Risk Note Revision Committee another case which will show how the merchants are made to suffer at the hands of the railways. Railways after having obtained a risk note deliberately recover charges at railway risk rates before the merchants see the goods (for they have to deposit railway freight with railways before they receive the goods) on the plea that although a risk note was taken the goods were carried at the risk of the railways and then when on inspecting the goods the merchants find that there has been loss the railways at once turn round and say that the railways are protected by risk notes. And takes months before the merchants can recover even the difference between the railway risk and owner's risk rates from the railways, although the railways recover freight from the merchants at railway risk, they take a risk note and refuse to pay any claim for compensation. In respect of one consignment of piece-goods booked in June 1919 from Asarva to Bara Bazar, risk note was taken at the despatching station but freight was realised at the destination at the railway risk rate on the ground that the goods were carried at railway risk but when the merchants found the loss the railways turned round and said they were protected by risk note,

and then when the merchants insisted that freight had been realised at the railway risk rate, the railways corresponded amongst themselves for months and after great trouble they passed order for the refund of difference in June 1922, i.e., after three years. (The amount of the said refund order has not yet been received.)

We would not now say any more, as we have dealt with the merchants side of the case very fully in our printed statement and placed there aforesaid facts before the committee and the public to enable them to judge how the railways can reconcile their statements made before the committee in Simla with the facts herein disclosed.

No. 189, dated the 23rd August, 1922.

Serial No. 108.

From—Sir M. C. T. MUTHIA CHETTY, President, Southern India Chamber of Commerce,

To—The Secretary, Railway Board, Simla.

With reference to your letter No. 505-T.-21, dated the 22nd May 1922, regarding the subject matter of the reference to the Railway Risk Notes Committee, I am to state the views of my Committee as under:—

Southern India
Chamber of
Commerce.

- (1) My Committee are disposed to place in the forefront the need for reversing the principle of throwing the onus of proof on the consignor in a claim for compensation arising out of the loss of goods entrusted to a Railway Administration. They are convinced that this principle has been the cause of the greatest hardship to the mercantile community till now, and unless this so-called principle is going to be abandoned, there can possibly be no improvement in the present deplorable state of affairs.
- (2) My Committee are for retaining the distinction that is now observed between a "special reduced" and an "ordinary" rate for goods; and while they are of opinion that in pursuance of the recommendations of the Acworth Committee, a full investigation should be made as to the articles for which "owner's risk" rates and "Railway risk" rates should be quoted; and also as to the difference in *quantum* between the two rates, corresponding to the difference in the liability imposed on the Railway undertaking; they urge that the Railway should, as till now, be asked to quote the two different rates in their tariff.
- (3) My Committee consider that the liability of the Railway Administrations in respect of goods entrusted to them for carriage, though governed legally by the provisions of Section 72 (1) of the Indian Railway Act, 1890, the several Risk Note forms approved by the Governor-General in Council are so worded and so interpreted by the Railway Administrations as to afford the maximum scope for evasions on the part of the Railway Companies of their just liability to the owners of goods entrusted to them. My Committee would, therefore, recommend that the words "for the loss of a complete consignment or of one or more complete passages forming part of a consignment" in the Risk Note forms should be dropped. This clause has been fruitful of the most mischievous consequences to consignors of goods by reason of extensive and serious malpractices on the part of those handling such goods, on behalf of the Railway.
- (4) My Committee also urge that the words "robbery from a running train" have been so interpreted as to include almost every loss of goods during transit, including ordinary theft, even by Railway servants. They would, therefore, urge that the significance of these words should be exactly defined.

I regret the delay in our reply to this reference which was unavoidable

NOTE.—The Committee also received representations from a number of private firms and individuals both Indian and European. These they have not thought it necessary to print.

RISK NOTE FORM A.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1899.]

(To be used when articles are tendered for carriage which are either already in bad condition or so defectively packed as to be liable to damage, leakage, or wastage in transit.)

_____ STATION.

_____ 192 .

WHEREAS the consignment of _____ tendered by $\frac{me}{us}$ as per forwarding order No. _____ of this date for despatch by the _____ Railway Administration or their transport agents or carriers to _____ station, and for which $\frac{I}{we}$ have received Railway receipt No. _____ of same date, is in bad condition $\frac{and}{or}$ liable to damage, leakage, or wastage in transit as follows:—

$\frac{I}{we}$, the undersigned, do hereby agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them, respectively, over whose Railways or by or through whose transport agency or agencies the said goods may be carried in transit from _____ station to _____ station harmless and free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same.

WITNESS.

Signature of sender _____

(Signature) _____

Rank or

Father's name _____

(Residence) _____

Caste _____ Age _____

WITNESS.

(Signature) _____

Profession _____

(Residence) _____

Residence _____

RISK NOTE FORM B.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when the sender elects to despatch at a "special reduced" or "owner's risk" rate articles or animals for which an alternative "ordinary" or "Risk acceptance" rate is quoted in the Tariff.)

_____ STATION.
_____ 192 .

WHEREAS the consignment of _____ tendered by $\frac{me}{us}$, as per forwarding order No. _____ of this date, for despatch by the _____ Railway Administration or their transport agents or carriers to _____ station, and for which $\frac{I}{we}$ have received Railway Receipt No. _____ of same date, is charged at a special reduced rate instead of at the ordinary tariff rate chargeable for such consignment, $\frac{I}{we}$, the undersigned do, in consideration of such lower charge, agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them respectively, over whose Railways or by or through whose transport agency or agencies the said goods or animals may be carried in transit from _____ station to _____ station, harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment, from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of the Railway Administration or to theft by or to the wilful neglect of its servants, transport agents or carriers employed by them before, during and after transit over the said Railway or other Railway lines working in connection therewith or by any other transport agency or agencies employed by them, respectively, for the carriage of the whole or any part of the said consignment: provided the term "wilful neglect" be not held to include fire, robbery from a running train or any other unforeseen event or accident.

WITNESS. Signature of sender _____
(Signature) _____ Rank or { Father's name _____
(Residence) _____ Caste _____ Age _____

WITNESS. Profession _____
(Residence) _____ Residence _____

RISK NOTE FORM C.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when, at sender's request, open wagons, carts or boats are used for the conveyance of goods liable to damage when so carried and which, under other circumstances, would be carried in covered wagons, carts or boats.)

_____ STATION.

_____ 192

WHEREAS the consignment of _____ tendered by $\frac{me}{us}$ as per forwarding order No. _____ of this date, for despatch by the _____ Railway Administration or their transport agents or carriers to _____ station, and for which $\frac{I}{we}$ have received Railway Receipt No. _____ of same date, is at $\frac{my}{our}$ request loaded in open wagons, carts or boats, to be so carried to destination, $\frac{I}{we}$, the undersigned, do hereby agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them, respectively, over whose Railways or by or through whose transport agency or agencies the said goods may be carried in transit from _____ station to _____ station, harmless and free from all responsibility for any destruction or deterioration of, or damage to, the said consignment which may arise by reason of the consignment being conveyed in open wagons, carts or boats during transit over the said Railway or other Railways working in connection therewith or during transit by any other transport agency or agencies employed by them, respectively.

WITNESS.

Signature of sender _____

(Signature) _____

Rank or { Father's name _____
Caste _____ Age _____

(Residence) _____

WITNESS.

(Signature) _____

Profession _____

(Residence) _____

Residence _____

RISK NOTE FORM D.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the
Indian Railways Act, IX of 1890.]

(To be used when the sender elects to despatch at a "special reduced" or "owner's risk" rate dangerous, explosive or combustible articles for which an alternative "ordinary" or "Risk acceptance" rate is quoted in the Tariff.)

_____ STATION.

_____ 192 .

WHEREAS the consignment of _____
tendered by $\frac{me}{us}$, as per forwarding order No. _____ of this date, for
despatch by the Railway Administration or their transport agents or carriers to
_____ station, and for which $\frac{I}{we}$ have received Railway Receipt
No. _____ of same date, is charged at a special reduced rate instead
at the ordinary tariff rate chargeable for such consignment, $\frac{I}{we}$, the undersigned;
do in consideration of such lower charge, agree and undertake to hold the said
Railway Administration and all other Railway administrations working in con-
nection therewith and also all other transport agents or carriers employed by
them, respectively, over whose Railways or by or through whose transport
agency or agencies the said goods may be carried in transit from _____
station to _____ station, harmless and free from all responsibility for
any loss, destruction or deterioration of, or damage to, the said consignment from
any cause whatever except for the loss of a complete consignment or of one or
more complete packages forming part of a consignment due either to the wilful
neglect of the Railway Administration or to theft by or to the wilful neglect
of its servants, transport agents or carriers employed by them before, during and
after transit over the said Railway or other Railway lines working in connection
therewith, or by any other transport agency or agencies employed by them,
respectively, for carriage of the whole or any part of the said consignment
provided the term, "wilful neglect" be not held to include fire, robbery from a
running train or any other unforeseen event or accident.

$\frac{I}{we}$ further agree to accept responsibility for any consequences to the
property of the aforesaid Railway Administration(s) and of their transport
agents and carriers or to the property of other persons that may be in the
course of conveyance which may be caused by the explosion of, or otherwise, by
the said consignment and that all risk and responsibility whether to the Rail-
way Administration or their transport agents and carriers, to their servants
or to others, remain solely and entirely with $\frac{me}{us}$.

Signature of sender _____

(Address) _____

WITNESS.

(Signature) _____

(Address) _____

WITNESS.

(Signature) _____

(Address) _____

Note.—The above form is, for the convenience of the public, translated into the vernacular on the reverse, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation.

RISK NOTE FORM E.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when booking elephants or horses of a declared value exceeding Rs. 500 a head ; mules, camels or horned cattle, Rs. 50 a head ; donkeys, sheep, goats, dogs, or other animals, Rs. 10 a head ; without payment of the percentage on value authorised in Section 73 of Act IX of 1890, as amended by Section 4 of Act IX of 1896.)

STATION.

192 .

WHEREAS $\frac{I}{we}$, the undersigned, have tendered to the _____ Railway Administration for despatch to _____ station the animal(s) mentioned below, for which $\frac{I}{we}$ have received Railway ticket No. _____ of this date ;

And whereas $\frac{I}{we}$ have paid to the said Railway Administration only their ordinary freight charge without any extra charge for insurance ;

And whereas the said Railway Administration for such ordinary freight charged holds itself responsible for proved damages to (*each of*) the said animal(s) caused by neglect or misconduct of its servants to the extent of the value mentioned below ;

And whereas the said Railway Administration has notified that it will not be liable for damage or loss arising from freight or restiveness, or delay not caused by the negligence or misconduct of its servants, and such condition is accepted by $\frac{me}{us}$;

$\frac{I}{we}$, the undersigned, do, in consideration of the foregoing terms and conditions, hereby agree and undertake that the responsibility of the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them, respectively, over whose Railways or by or through whose transport agency or agencies the said animal (s) may be carried in transit from _____ station to _____ station, for the loss, destruction or deterioration of, or damage of (*each of*) the said animal(s) shall not exceed the value mentioned below :—

Animals.			Animals.		
No.	Description.	Value of each.	No.	Description.	Value of each.
		Rs.			Rs.
	Elephants ...	500		Donkeys ...	10
	Horses ...	500		Sheep ...	10
	Mules ...	50		Goats ...	10
	Camels ...	50		Dogs ...	10
	Horned cattle ...	50		Other animals ...	10

WITNESS.

Signature of sender _____

(Signature) _____

(Residence) _____

Rank or

{ Father's name _____

{ Caste _____ Age _____

WITNESS

(Signature) _____

Profession _____

(Residence) _____

Residence _____

N.B.—(1) The words in *italics* should be scored out by the booking clerk when only one animal is sent.

RISK NOTE FORM F.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when booking horses, mules and ponies tendered for despatch in cattle-trucks or horse-wagons instead of in horse-boxes.)

_____ STATION.

_____ 192

WHEREAS the consignment of _____ tendered by $\frac{me}{us}$, as per forwarding order No. _____ of this date for despatch by the _____ Railway Administration to _____ station, and for which $\frac{i}{we}$ have received Railway Receipt No. _____ of same date, is at $\frac{my}{our}$ request and in consideration of the payment by $\frac{me}{us}$ of cattle-truck or horse-wagon rate in lieu of horse-box rate, loaded in cattle-trucks or horse-wagons instead of horse-boxes to be so carried to destination ;

And whereas the said Railway Administration has notified that it will not be liable for damage or loss arising from freight or restiveness or delay not caused by the negligence or misconduct of its servants and such condition is accepted by $\frac{me}{us}$.

$\frac{i}{we}$, the undersigned, do hereby agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith, over whose Railways the said animal(s) may be carried in transit from _____ station to _____ station, harmless and free from all responsibility in excess of Rs. 50 (per head) for any loss, destruction or deterioration of, or damage to, the said consignment during transit over the said Railway or other Railways working in connection therewith.

WITNESS.

(Signature) _____ Signature of sender _____

(Residence) _____ Rank or { Father's name _____
Caste _____ Age _____

WITNESS.

(Signature) _____ Profession _____

(Residence) _____ Residence _____

RISK NOTE FORM G.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used as an alternative to Risk Note Form D, in the case of dangerous explosive or combustible articles, for which an alternative "ordinary" or "risk acceptance" rate is quoted in the Tariff, when the sender desires to enter into a general agreement instead of executing a separate risk note for each consignment.)

_____ STATION.

_____ 192 .

WHEREAS all consignments of _____

for which the Railway Administration quotes both owner's risk or special reduced rates and Railway risk or ordinary rates are (unless $\frac{1}{100}$ shall have entered into a special contract in relation to any particular consignment) despatched by $\frac{me}{us}$ at ($\frac{me}{our}$) own risk and are charged for by the said Railway Administration at special reduced or owner's risk rates, instead of at ordinary tariff or Railway risk rates, $\frac{1}{100}$, the undersigned, in consideration of such consignments being charged for at the special reduced or owner's risk rates, do hereby agree and, undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith, and also other transport agents or carriers employed by them, respectively, over whose Railways or by or through whose transport agency or agencies the said consignment of _____ may be carried in transit from _____ station to _____ station, harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, all or any such consignments from any cause whatever, *except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of the Railway Administration or to theft by or to the wilful neglect of its servants, transport agents or carriers employed by them* before during, and after transit over the said Railway or other Railway lines working in connection therewith, or by any other transport agency or agencies employed by them, respectively, for the carriage of the whole or any part of the said consignments *provided the term "wilful neglect" be not held to include fire, robbery from a running train or any other unforeseen event or accident.*

$\frac{1}{100}$ further agree to accept responsibility for any consequences to the property of the aforesaid Railway Administration(s) and of their transport agents and carriers, or to the property of other persons that may be in the course of conveyance, which may be caused by the explosion of or otherwise, by all or any of the said consignments, and that all risk and responsibility whether to the Railway Administration(s) or their transport agents and carriers, to their servants or to others, remains solely and entirely with $\frac{me}{us}$.

WITNESS.

(Signature) _____

(Residence) _____

WITNESS.

(Signature) _____

(Residence) _____

Signature of sender _____

Rank or { Father's name _____
Caste _____ Age _____

Profession _____

Residence _____

Note.—The above form is, for the convenience of the public, translated into the vernacular on the reverse, but the form in English is the authoritative form, and the Railway Administration accepts no responsibility for the correctness of the vernacular translation.

RISK NOTE FORM H.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used as an alternative to Risk Note Form B, when a sender desires to enter into a general agreement instead of executing a separate Risk Note for each consignment).

_____ STATION.

_____ 192

WHEREAS all consignments of goods or animals for which the _____ Railway Administration quotes both owner's risk or special reduced rates and Railway risk or ordinary rates are (unless $\frac{I}{we}$ shall have entered into a special contract in relation to any particular consignment) despatched by $\frac{me}{us}$ at $\frac{my}{our}$ own risk and are charged for by the _____ Railway Administration at special reduced or owner's risk rates instead of at ordinary Tariff or Railway risk rates, $\frac{I}{we}$, the undersigned, in consideration of such consignments being charged for at the special reduced or owner's risk rates, do hereby agree and undertake to hold the _____ Railway Administrations and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them respectively, over whose Railways or by or through whose transport agency or agencies the said goods or animals may be carried in transit from _____ station to _____ station, harmless and free from all responsibility for any loss, destruction, or deterioration of, or damage to, all or any of such consignments from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of the Railway Administration, or to the theft by or to the wilful neglect of its servants, transport agents or carriers employed by them before during and after transit over the said Railway or other Railway lines working in connection therewith or by any other transport agency or agencies employed by them, respectively, for carriage of the whole or any part of the said consignments: provided the term "wilful neglect" be not held to include fire, robbery from a running train or any unforeseen event or accident.

WITNESS.

(Signature) _____

Signature of sender _____

(Residence) _____

Rank or { Father's name _____
Caste _____ Age _____

WITNESS.

(Signature) _____

Profession _____

(Residence) _____

Residence _____

RISK NOTE FORM Y.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used as an alternative to Risk Note Form X, when the sender elects to enter into a general agreement for a term not exceeding six months, for the despatch of "excepted" articles specified in the second schedule to the Indian Railways Act, IX of 1890, when value exceeds one hundred rupees, without payment of the percentage on value authorized in Section 75 of that Act, instead of executing a separate risk note for each consignment.)

_____ STATION.

_____ 192

WHEREAS consignments of _____ tendered by $\frac{me}{us}$, for despatch by the _____ Railway Administration or their transport agents or carriers are charged at the ordinary rates for carriage, and whereas $\frac{1}{wo}$ have been required to pay or engage to pay, and elected not to pay or engage to pay, a percentage on the value of the consignments by way of compensation for increased risk, $\frac{1}{wo}$, the undersigned, do therefore agree and undertake, except in relation to any particular consignment for which $\frac{1}{wo}$ may have entered into a special contract, to hold the said Railway Administration and all the other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them, respectively, over whose Railways or by or through whose transport agency or agencies the said goods may be carried in transit, harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignments from any cause whatever before, during and after transit over the said Railway, or other Railway lines working in connection therewith or by any other transport agency or agencies employed by them, respectively, for the carriage of the whole or any part of the said consignments.

WITNESS.

Signature of sender _____

(Signature) _____

(Residence) _____

Rank or

{ Father's name _____
Caste _____ Age _____

WITNESS.

(Signature) _____

Profession _____

(Residence) _____

Residence _____

RISK NOTE FORM X.

[Approved by the Governor-General in Council under Section 72 (2) (b) of the Indian Railways Act, IX of 1890.]

(To be used when the sender elects to despatch an "excepted" article or articles specified in the second schedule to the Indian Railways Act, IX of 1890, whose value exceeds one hundred rupees without payment of the percentage on value authorized in Section 75 of that Act.)

_____ STATION.

_____ 192

WHEREAS the consignment of _____ tendered by _____ as per forwarding order No. _____ of this date, for despatch by the _____ Railway Administration or their transport agents or carriers to _____ station, and for which $\frac{1}{\text{we}}$ have received Railway Receipt No. _____ of same date, is charged at the ordinary rates for carriage, and whereas $\frac{1}{\text{we}}$ have been required to pay, and elected not to pay a percentage on the value of the consignment by way of compensation for increased risk, $\frac{1}{\text{we}}$, the undersigned, do therefore agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them respectively, over whose Railways or by or through whose transport agency or agencies the said goods may be carried in transit from _____ station to _____ station, harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever before, during and after transit over the said Railway, or other Railway lines working in connection therewith or by any other transport agency or agencies employed by them, respectively, for the carriage of the whole or any part of the said consignment.

WITNESS.

(Signature) _____ Signature of sender _____

(Residence) _____ Rank or { Father's name _____
Caste _____ Age _____

WITNESS.

(Signature) _____ Profession _____

(Residence) _____ Residence _____