The committee was of opinion that the reform would tend to give more public confidence in the fairness of the law, in that, in a proper case, a jury publicly recognizes carelessness of each party concerned by pronouncing upon it, and determining its verdict according to the percentage of fault of each. This would be particularly so in the case of the few uninsured defendants now remaining who at present may feel that no account is taken of the injured party's fault.

There is some uncertainty whether the reform proposed might lengthen trials or increase litigation, and upon this matter, the following comments are made:—

(a) At present the presence of possible contributory negligence does not deter commencement and prosecution of litigation.

(b) There is probably a small percentage of cases which are not commenced now but which would be initiated if the reform took place. Examples are cases of comparatively minor injury when there is strong evidence of contributory negligence and cases where proof of the plaintiff's case necessarily involves contributory negligence on the *Packham v. Railway Commissioner* (41 S.R. 146) principle. If some extra litigation results from the reform, this is not a valid argument against it, since the proper conclusion to be drawn is that persons who are not in the present state of the law entitled to damages because the law is unjust, would be put in the position of being able to bring an action.

(c) It is possible that some defendants would contest liability with a view to raising the conduct of the plaintiff, whereas now they admit liability or settle. It is difficult to be sure about this, for so much depends on the particular approach adopted by the particular legal adviser or the particular insurer involved. However, over all, it is unlikely to make much difference. At the present time, even if the plaintiff is at fault to some degree, liability is not fought if the negligence of the defendant is gross. Generally speaking, it is felt that the position eventually under the reform, would be much the same, but that there could be a settling down period.

(d) Assuming liability be contested, whether now or under the reform, then there should be no appreciable difference in the length of the case. If the last opportunity rule is expressly abolished at the same time (as in Western Australia) in some cases, time will be saved.

In the last few paragraphs the position which arises in cases of trial by jury has been dealt with. In cases of trial by a judge, whether by consent or as in the District Court, as a matter of course, the present rule is most unsatisfactory. To say the least, the Judge is placed in the most distasteful position of being obliged to give nothing to a plaintiff who, in fairness, ought to receive some compensation. The harshness of the law may tend to produce judicial precedents which come within the old saying "hard cases make bad law".

There is one further consequence of the matters referred to in the last paragraph. Because of the difficulties facing a judge, at present plaintiffs when properly advised will not dispense with a jury in the Supreme Court or fail to ask for a jury in the District Court, in any case where there is the slightest suggestion of contributory negligence. With the reform, the plaintiff's disinclination to dispense with a jury might well be expected to lessen. One would, therefore, expect that there would be more trials by judges without juries under the reform, and to this extent litigation might well be speeded up. This would, no doubt, be particularly so in the District Court where a positive step is to be taken if a jury is required.

The opinions and recommendations expressed by the sub-committee were not the result of any survey from the profession but members of the committee informed their own minds, not only from their own experience, but by deliberate though casual discussion with members of the profession, both counsel and solicitors, whose practice is principally for plaintiffs, as well as counsel and solicitors whose practice is principally for defendants. Without exception, the proposed reform was favoured. Some, while expressing doubts, felt there could be a slight increase in the number of cases where liability was contested, but most thought it would make no real difference.

Genders v. Government Insurance Office

As has been mentioned above, the Attorney-General (The Hon. R. R. Downing), in 1961, sought the views of the Bar Council upon the amendment of the law arising out of the decision in *Gender's Case*. In his letter to the Council, he set out in summary form the results of the joint judgment of the judges of the High Court and mentioned various *obiter dicta* contained in the judgment which may be summarized as follows:—

(1) The operation of s. 15(2) of the Motor Vehicles (Third Party Insurance) Act is spent insofar as it relates to cases in which the insured person is dead.

(2) The insurance required to be effected by the above-mentioned Act, and, in fact, embodied in the third party policy, covers all indebtedness arising as a result of an accident.

(3) Section 2 of the Law Reform (Miscellaneous Provisions) Act 1944, and s. 5 of the Law Reform (Miscellaneous Provisions) 1946, are procedural in effect, and are operative with respect to the indemnity under a third party policy.

(4) The right of contribution under the Act of 1946 is enforceable against the estate of a deceased joint tortfeasor by reason of the Act of 1944, and the authorized insurer of that joint tortfeasor is liable under the third party policy to indemnify that estate with respect to the contributions.

The Attorney-General pointed out that various difficulties arise as a result of holding that the operation of s. 15(2) is spent where the insured person is dead. He also indicated that representations had been made to him suggesting amendment to the law and said "The earlier representations favoured amendment of the Motor Vehicles (Third Party Insurance) Act, which would have the effect of reviving the right of action against the authorized insurer. Later representations concerned the effect of a third party policy and suggested, in effect, the inclusion of amendments which would codify the dicta of the High Court in relation to the effect of such a policy. These later representations, would necessarily involve accepting the position in *Genders' Case*

(i.e., that the operation of s. 15(2) of the Motor Vehicles (Third Party Insurance) Act was spent), and also accepting the position that the plaintiff's remedies should be found in the two Law Reform (Miscellaneous Provisions) Acts.

He then summarized the problems which these two different sets of representations gave rise to. The questions which he posed to the Council were as follows:—

(1) Should the remedy for damages for death or bodily injury arising out of the use of a motor vehicle, where the person in default is dead at the time the proceedings are commenced, lie against —
   (a) the authorized insurer; or
   (b) the personal representative of the deceased?
(2) Should the remedy be against one or the other exclusively, or should the plaintiff have the right to elect to take his proceedings against one or both?
(3) Should the injured party have the right to elect to take his proceedings against the driver (or owner) of a vehicle if he is still alive at the date of the action, notwithstanding that the owner (or driver) is dead at the time of action brought?
(4) If the remedy to be provided is against the authorized insurer, should the principle of contribution between joint tortfeasors be maintained? (A position may arise in which both tortfeasors are dead.)
(5) If the remedy is against the personal representative of the insured person —
   (a) Should provision be made for extending the time for instituting proceedings?
   (b) Should special provision be made for the case in which no representation is taken out (at least, one such case has been mentioned in the representations made)? and
   (c) Would any special provision be necessary in relation to the statutory presumption of agency?
(6) With regard to a third party policy, is it necessary or desirable to amend the Motor Vehicles (Third Party Insurance) Act to put beyond doubt, the construction that such policy indemnifies the personal representative of the insured person, both as regards a claim for damages and a claim for contribution as a joint tortfeasor?
(7) Is it necessary or desirable to put it beyond doubt that such a cover extends, not only to the case where proceedings are taken against the personal representative of the owner (or driver), but also in the case where proceedings are taken against the surviving driver (or owner) of the vehicle?
(8) With regard to the statutory presumption of agency, is amendment of the Act necessary or desirable to ensure that such presumption is applicable with respect to proceedings against the personal representative of the insured person, either initially or for recovery of contribution as a joint tortfeasor?
(9) Special problems arise in relation to pending proceedings falling within the categories:—
   (a) Those pending at the date of the judgment (1st July 1959); and
   (b) Those pending at the commencement of the amending legislation.

The committee, which considered this matter, commented that the view had been expressed, notably in an article by Professor Parsons in 33 A.L.J. 259, under the heading "Survival of Actions and Contribution Legislation" that *Genders' Case* was wrongly decided, but that for the purposes of the report, there was no need to consider this aspect of the matter.

The committee commented on the various matters raised in the Attorney-General's letter. It agreed that with the summary of the effect of the judgment contained in the Attorney-General's letter, and expressed the opinion that the best approach to proposed amendments would be along the lines of the first suggestion, namely, amendments which would have the effect of reviving the right of action against the authorized insurer, since this would put the position back to what it was believed to be before the decision in *Genders' Case,* and since the experience of the profession appears to be that the section worked satisfactorily as previously understood. It then proceeded to deal with the various problems which the Attorney-General had set out in his letter.

It dealt with questions 1 and 2 together and expressed the opinion that action should lie against both the authorized insurer and the personal representative of the deceased, the plaintiff having the right to elect to take his proceedings against one or both. Such an amendment would restore the position under s. 15(2)(a) as it was believed to exist prior to *Genders' Case,* and would deal more effectively with problems arising from the possible variation in the order in which any of the parties die, e.g., in the circumstances that A is injured by the negligence of B, and B dies before action brought and subsequently A dies, leaving a widow entitled to sue under the Compensation to Relatives Act, the right of A's widow to sue under the latter Act, would only arise on the death of A and at that point of time B is dead.

Question 3. The committee came to the conclusion that the right of the injured person should be primarily against the survivor in the case of a separate owner and driver, but, in the event of the death of the owner or driver, the injured person should have a right to sue either the survivor, or the authorized insurer, or both. It was, the committee thought, necessary to preserve the right against the driver, because of the possibility that proof of the plaintiff's case would depend upon admissions made by the driver at the time of the accident, or subsequently, which, on the law as it stands, would not be admissible against the owner or the authorized insurer.

Question 4. The principle should, so the committee thought, be maintained, and it should be maintained even where both tortfeasors are dead. This might, in fact, be of little practical importance because of the high percentage of third party insurance policies held by the Government Insurance Office.

Question 5. The committee came to the conclusion that questions (a) and (b) should be answered "Yes", and suggested, in regard to (c), that the matter raised should be put beyond doubt, because it felt that there must be some doubt as to whether the presumption of agency provided for in s. 16 of the Act taken in conjunction with the specific definition of owner, would arise as against the estate of an insured person. Similarly, it felt that there must be some doubt as to whether the

presumption would arise in the case of claims for contribution between joint tortfeasors.

Question 6. This matter was not finally decided by the High Court, but, in the opinion of the committee, it should be put beyond doubt and the position left as it is now believed to be.

Question 7. The committee thought it desirable to put it beyond doubt that the cover extends, not only to the case where proceedings are taken against the personal representatives of the owner, (or driver), but also in the case where proceedings are taken against the surviving driver (or owner) of the vehicle.

Question 8. In view of the matters referred to above, the committee considered that this amendment was both necessary and desirable.

Question 9. The committee considered, that, although this involved the question of retrospective legislation, and although the Council had always been opposed to legislation having retrospective effect, in the peculiar circumstances of this case, namely, that a firmly held belief of the profession, which was for many years acted upon, had suddenly been found to be wrong, was sufficient ground to justify retrospective legislation where otherwise persons would be deprived of an action irretrievably.

The conclusions which were reached by the Bar Council's committee were, in pursuance of a wish expressed by the Attorney-General, discussed with a subcommittee of the Law Society of New South Wales consisting of Mr. Tillam and Mr. Dunlop, who provided the committee with a copy of their report. In all respects the two committees appeared to be in agreement.

The results of the committee's deliberations were in due course transmitted to the Attorney-General, and have been placed before the Permanent Law Reform Committee which has to deal with the problems raised by this case, as being the considered views of the Bar Council.

The Medico-Legal Society of New South Wales

At a well-attended meeting of the Society held on 21st February, 1962, at the Robert H. Todd Memorial Hall, the President of the Bar Association, Meares Q.C., presented a paper entitled "What is the proper method of determining medical issues in personal injury cases?" The paper produced a very stimulating discussion led by Dr. W. D. Sturrock, in which Judges as well as practising members of both professions took part.

The next meeting of the Society will take place on 9th May, 1962, at the same place when Dr. Zelman Freeman, M.R.C.P. (Lond.) M.R.C.P. (Edin.), will present a paper on "Heart Disease in Industry". The principal commentator will be Samuels of the Bar. Members of the Bar are invited to attend.

International Commission of Jurists Australian Section

The Secretary-General of the Commission, Sir Leslie Munro, K.C.M.G., K.C.V.O., visited Australia with Lady Munro from the 16th to 27th March, 1962. Sir Leslie, whose headquarters are in Geneva, is at present in the course of a three month mission to Asia and Australasia. The purpose of the mission is to study legal developments in some fifteen countries of the Far East and to meet members of the legal community and government officials. By the end of his mission, Sir Leslie will have visited East and West Pakistan, India, Ceylon, Burma, Thailand, Malaya, Indonesia, Singapore, Australia, New Zealand, Viet-nam, Cambodia, Laos, Philippines, Japan and Hong Kong.

Sir Leslie, who was President of the United Nations General Assembly during 1957-1958, has had a most distinguished career. He was New Zealand's Ambassador to the U.S.A. and Permanent Representative to the United Nations from 1951-1958. In 1958, the General Assembly appointed him its Special Representative to report on the position in Hungary. At various times, Sir Leslie has been, amongst other things, a practising lawyer, university lecturer in law, newspaper editor, author, and radio commentator on international affairs.

In Australia, Sir Leslie and Lady Munro visited Sydney, Canberra, Melbourne, Adelaide and Perth. They met the State Governors, the Prime Minister, Judges, practising lawyers and law teachers. In Sydney, Sir Leslie addressed a public meeting at the Todd Memorial Hall and attended a late-afternoon cocktail party at the Hotel Australia. In the other States, he addressed well attended meetings of the State Branches of the Australian Section.

The Australian Section has been for some time carrying out a survey of the facilities available in Australia and the Territories for accused persons who have language difficulties. Many experienced Judges, Magistrates and Counsel have made valuable contributions and suggestions in connection with the survey. The survey is nearing completion and it is expected that the final report will be ready for publication in a few months. This report should provide a useful analysis of the problems arising in the administration of justice due to language difficulties and differences.

International Law Association (Australian Branch)

The International Law Association is the oldest of all Associations whose objectives include the study and development of International Law in its many aspects. It has active branches in almost every country throughout the world and its members include many jurists of international repute. The Chairman and Vice Chairman are Lord McNair Q.C. and The Rt. Hon. Lord Hodson respectively.

The Australian Branch was formed about 3 years ago and it now has 110 members who come from all the States and include a number of Judges, Professors, and members of the legal profession, as well as some laymen and institutions. The Rt. Hon. Sir Owen Dixon is a Patron.

A number of interesting addresses have been given by Sir Percy Spender, Sir Garfield Barwick, Professor Bailey, Professor Stone and others. The Vice Dean of the Faculty of Law in the University of Singapore, Professor Green, will give an address on the subject "The Right of Asylum" in July next.

Many of the members are "corresponding members" with International Committees established by Head-