

[HIGH COURT OF AUSTRALIA.]

WILLIAMS APPELLANT;
 PLAINTIFF,
 AND
 AUSTRALIAN MUTUAL PROVIDENT }
 SOCIETY RESPONDENT.
 DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

Practice—Appeal Rules—Change of parties—No provision in rules—Order that proceedings be carried on in name of new party—Rules of the High Court 1903, Pt. I., Order XI., r. 4. H. C. OF A.
1905.

SYDNEY,
March 25.

Griffith C.J.,
Barton and
O'Connor JJ.

Where it became necessary, after the institution of an appeal to the High Court, to have the name of a new party substituted for that of the appellant, there being no provision for such a case in the Appeal Rules, the High Court made an order analogous to that prescribed by r. 4 of Order XI., Pt. I. of the Rules of the High Court 1903, that the appeal should be carried on between the new party, as appellant, and the original respondent, and that the proceedings should be amended accordingly.

MOTION for leave to continue an appeal in the name of a new party.

The appellant as executor brought an action in the Supreme Court of New South Wales, against the respondent Society, upon certain policies of assurance upon the testator's life. While the action was pending, the respondent obtained an order from a Judge directing that a commission should issue for the examination of a witness in New Zealand. A motion by the appellant to have the order set aside by the Full Court was refused (1). From the order of the Full Court the present appeal, by leave of the High Court,

(1) 21 N.S.W. W.N., 249.

H. C. OF A.
1905.
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WILLIAMS
v.
AUSTRALIAN
MUTUAL
PROVIDENT
SOCIETY.
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was instituted. While the appeal was pending, the widow of the testator, by virtue of a power conferred upon her by a codicil of the will, elected to become executrix in place of the appellant, who had up to that time acted as executor. It therefore became necessary for her to become a party to the appeal, in place of the former executor. A suggestion of the change in the executorship was entered in the Supreme Court.

J. L. Campbell, for the executrix, moved *ex parte* for leave to continue the appeal in the name of the executrix. There is no rule, among the Appeal Rules of the High Court, which provides for such a case. The proper order would be one analogous to that prescribed by the Rules of the High Court 1903, in Pt. I. Order XI., r. 4, in cases where, in proceedings taken in the High Court, in its original jurisdiction, it becomes necessary or desirable, by reason of some event occurring after the commencement of a matter, that a person not already a party should be made a party.

The Court made an order that the proceedings on appeal be carried on between the applicant, as appellant, and the respondent, and that the proceedings be amended accordingly.

Solicitor for the applicant, *T. Michell*.

C. A. W.