

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of George Herbert Wakeman (Official Receiver and Trustee in the Bankruptcy of the Lai Hing Firm) v. Wong Li Shi (Administratrix of the Estate and Effects of Wong Ka Chuen, deceased), from the Supreme Court of Hong Kong; delivered the 7th May, 1909.*

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Present :

THE LORD CHANCELLOR.

LORD ASHBOURNE.

LORD JAMES OF HEREFORD.

LORD GORELL.

[*Delivered by the Lord Chancellor.*]

Their Lordships are not able to advise His Majesty that there ought to be a new trial in this case.

The Appeal has not been argued on the footing that the verdict of the jury was against the weight of evidence, nor was it capable of being argued in that way, apart from the summing-up. The summing-up of the learned Chief Justice has, however, been the subject of the criticisms which are made the foundation of the Appeal.

Their Lordships do not think that the summing-up was wholly satisfactory, and several

criticisms were made upon it which, in their opinion, are well founded. There is certainly a great deal to be said as to the great weight of certain parts of the evidence adduced on behalf of the Plaintiff (the Appellant); but their Lordships cannot forget that the case was tried by a jury who knew Hong Kong and Chinese customs, and knew how much reliance they could place upon Chinese evidence. Although the matters in issue might have been presented in another way in the summing-up, yet the jury heard all the evidence during a period of six days, and also heard the arguments of Counsel.

Again, it is not a circumstance to be forgotten that since the trial the Defendant, who was the principal, if not the only really important witness called on behalf of his own case, has died, so that it would be extremely difficult to retry this issue.

In these circumstances their Lordships will humbly advise His Majesty to dismiss this Appeal; but without any costs of the Appeal on either side.