

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Raman
Chetty v. Steel Brothers and Company,
Limited, from the Chief Court of Lower
Burma ; delivered the 18th May 1911.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ROBSON.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[DELIVERED BY SIR ARTHUR WILSON.]

This Appeal arises out of conflicting claims set up by the respective parties in insolvency proceedings, which took place in the Chief Court of Lower Burma. The subject-matter of the Appeal is the sale proceeds of a steam launch and a number of cargo boats which had been the property of the insolvent Maung Gyi, and which were sold in the course of realising the estate of the insolvent.

The claim of the Appellant was based upon a mortgage, dated the 30th December 1903, by which the steam launch and most of the cargo boats were mortgaged by Maung Gyi to one, Nagappa Chetty, who was the agent of the present Appellant, to secure a sum of money then advanced. On the 30th November 1904, and on the 24th July 1905, further mortgages or charges were made in favour of persons who are no parties to the present proceedings ; and, owing to the course pursued by the parties interested

and to the course of the present proceedings, those last-mentioned transactions need not be considered in disposing of the present case. That case is concerned with Nagappa's mortgage of the 30th December 1903, and that of Steel Brothers, the Respondents, dated the 14th September 1905; and the sale proceeds being insufficient to meet the two claims, or indeed either of them in full, the question is, which of them is entitled to priority over the other? Both the learned Judge who sat in Insolvency and those who heard the Appeal from his Judgment, decided in favour of the Respondents.

On the argument of the Appeal before their Lordships, several questions were argued, some of which might have given rise to difficulty if it had been necessary to decide them; but in their Lordship's opinion the case may be, and ought to be, disposed of upon one ground which is simple and clear, namely, that the Appellant was an assenting party to the mortgage or charge executed in favour of the Respondents, and actually received a large portion of the mortgage money thus raised. This is quite clear from the letter dated the 12th December 1905; and the mortgage or charge in favour of the Respondents contained an express covenant that the property mortgaged was free from encumbrances. The Appellant, having thus concurred in inducing the Respondents to advance their money, as a first charge, cannot now turn round and claim priority over that charge in favour of their own mortgage subsisting from an earlier date.

On this ground their Lordships are of opinion that the case has been rightly decided in Burma, and that this Appeal should be dismissed, and they will humbly advise His Majesty accordingly.

The Appellant will pay the costs of the Appeal.



In the Privy Council.

RAMAN CHETTY

v.

STEEL BROTHERS & Co., LIMITED.

LONDON:

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PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

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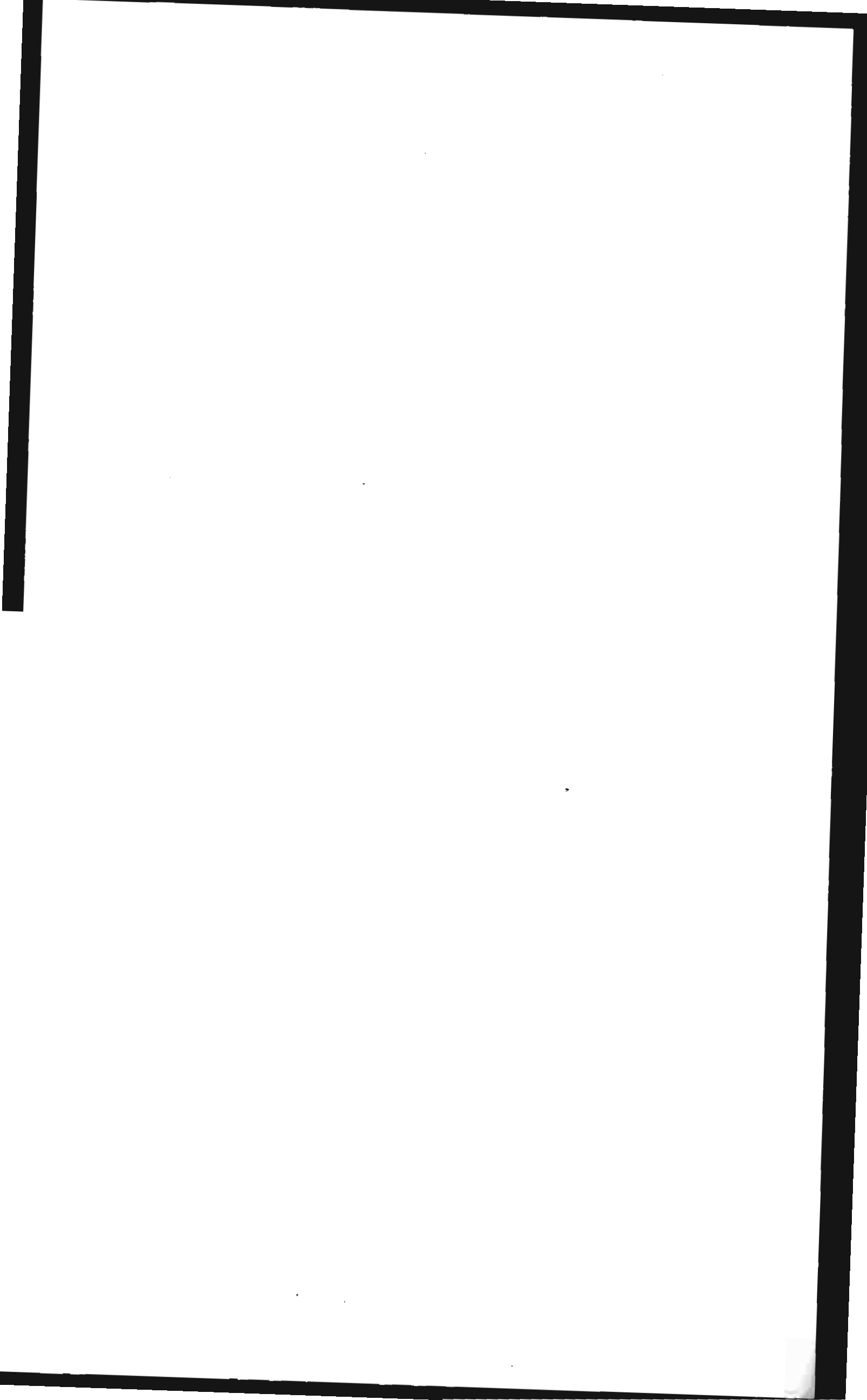
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