

13.4.38.

MEMORANDUM REGARDING SALE OF S.S. "AUNGBAN"

B.O.C. offered s.s. "Aungban", a tank steamer of 7573 tons dweight capacity, in February 1937, through C.H. Rugg & Co., p-brokers, of London, for sale under covenant to break-up: iverly to be made at Rangoon about 20.9.1937.

Rugg obtained an offer from OKADA SEIICHI of Osaka to take ivery at Osaka between 10th October and 10th November 1937, pay in cash against Bill of Sale, and to break-up the ship thwith, with firm promise not to use the ship for further ding. This offer was accepted at price of £13,500 and an eement was executed in London on 22nd February 1937. Hall ier & Co., of London, Ship-brokers, signed by telegraphic hority for the Purchaser.

Terms of Agreement were briefly as follows:-

Steamer to be delivered with everything belonging to her on board, including Lloyd's certificates, "as she lies" but free of average, at Osaka between 10th October 1937 and 10th November 1937. If not delivered within these dates, Purchaser may maintain or cancel agreement, but delay up to 30 days caused by force-majeure and/or average repairs to be accepted by Purchaser. Purchase price to be £13,500 sterling: Purchaser to deposit 15% of purchase money, on signing of agreement, with Bank of Scotland in London in joint names of Vendor's and Purchaser's London Agents, to be paid over to Vendors in London on delivery of steamer. Balance to be paid to Vendor's Agent at port of delivery in exchange for Bill of Sale, certificates, etc.. Steamer deemed ready for delivery when discharged of cargo, made gas-free, and tendered at Osaka. Purchaser guarantees that on arrival in Japan the vessel will be broken up and not used for further trading, and undertakes to supply an official certificate that

demolition has been completed. Purchaser pays Import Duty, Vendor pays Consular fees for transfer. If delivery not taken within 7 days of vessel being tendered, Purchaser to pay demurrage, 3d. per net registered ton per day, but such detention not to exceed 15 days. If delivery prevented by loss or wreck of the steamer, outbreak of war, political reasons, restraints of Governments, Princes or Peoples, contract to be void and deposit to be returned to Purchaser. If delivery not effected through fault of Purchaser, deposit to be forfeited to Vendor, and Purchaser to make compensation for disappointment and loss. If default made by Vendor, deposit to be returned to Purchaser, and Vendor to make compensation for disappointment and loss. Any difference of opinion, claim, or dispute, to be settled by arbitration in London: one Arbitrator for each party, and jointly appointed Umpire, whose decision to be final and accepted as a ruling of Court.

- (4) B.O.C. appointed Dodwell & Co., Kobe, as their Agents in Japan for transfer of the vessel; also asked Dodwell to report on progress of demolition.

- (5) On 30th July 1937, Rugg submitted to B.O.C. a telegram from Japan reading: "Buyers require option trading. How much do Owners require?"

B.O.C. replied to Rugg on 3rd August 1937, for transmission to Japan,

"Regret that we cannot agree, on any terms whatever, to allow the Purchaser to use s.s. Aungban for trading. We adhere to the Memo. of Agreement dated 22.2.37 wherein the Purchaser has guaranteed that on arrival in Japan the vessel shall be broken-up and not used for further trading of any description."

- (6) On 5th October 1937, ("Aungban" then en route for Osaka,

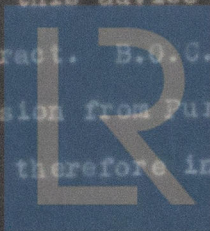
via Melbourne, Australia), Rugg reported grave difficulties in connection with sale of other ships to Japanese buyers in obtaining Japanese Government permission to export sterling. B.O.C.'s reply of 6.10.37 to Rugg was that the ship would be offered for delivery, and that if the balance of contract price was not forthcoming the ship would be taken away and the deposit-money claimed.

On 12th October 1937, Dodwell reported that Purchaser had not yet obtained permission to export sterling and, in their opinion, was not likely to. B.O.C. maintained their decision to fulfil their part of bargain to the letter, and again instructed Dodwell to tender delivery within prescribed dates and to avoid slightest breach, even accidental, of any Japanese Government regulations or formalities.

On 18th October 1937, Rugg reported a telegram from Japan as follows:-

"Permission (to export sterling)
impossible unless with option
to trade, for which Buyer willing
pay £2000 extra. What will Owners
accept?"

B.O.C., being bound by a promise of long standing to friends/associates that tank-vessels would not be sold except under covenant to break-up, could not consider this or any offer of extra payment for right to trade. B.O.C. took legal advice at this point, when Aungban was two days out from Melbourne en route for Osaka. Their Adviser stated that if performance of the contract by the Buyer had been rendered impossible of fulfilment by action of the Japanese Government, the Buyer defaulted and thereby forfeited his rights in the deposit-money so that B.O.C. might safely save themselves the trouble of tendering the vessel for delivery; but this advice appeared to B.O.C. to be inconsistent with contract. B.O.C. considered it necessary to get an admission from Purchaser that he could not keep his bargain, and therefore instructed Rugg to reply,



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(sent on 18th October),

"Sellers unable accept offer for trading and insist upon fulfilment contract as drawn".

On 21st October 1937, B.O.C. advised Dodwell of position by telegram, instructing them to tender the vessel for delivery, and, if delivery not taken, to note protest with British Consul at Osaka and send ship away promptly to a non-Japanese port.

S.S. "Aungban" reached Osaka on 5th November. On 12th idem, Dodwell telegraphed reporting Buyer's proposal to pay £8000 in London forthwith and to remit balance in one month, meantime depositing the equivalent in Japanese currency plus 5% with Dodwell, and to take delivery of the vessel on 13th November. B.O.C. replied by telegram to Dodwell on 12th November, that full balance must be paid in London before delivery, otherwise ship must be withdrawn.

On 16th November 1937, Purchaser's London Agents, Messrs. Hall Angier, tendered full payment of balance of purchase price and release-note for deposit-money: B.O.C. accepted the tender, waiving the small amount of demurrage then due, and telegraphed to Dodwell authorising delivery. The ship was duly handed over at Osaka and passed into Purchaser's hands. It became known to B.O.C. that the funds tendered by Hall Angier had not all been remitted from Japan but collected from various credits available to them or to their Client.

On 29th November, 1937, Rugg passed on a telegram from [unclear] as follows:-

"Do your utmost arrange Buyers option for about 18 months more postpone break-up, meantime trading. Buyers paying compensation £3000."

B.O.C. replied, through Rugg,

"Cannot agree postponement break-up."



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Rugg then pointed out that Japan was short of tanker-tonnage and that the ship might be commandeered by Japanese Government; asking whether a higher offer might induce B.O.C. to change mind. B.O.C. replied, 30.11.37, that it was a matter of principle. B.O.C.'s reply (see above) was then passed on to Japan.

Note that even if question of principle had not operated, the cash offer was inadequate: a fair price for s.s. "Aungban" as a going concern would have been about £25,000 at that time.

- (13) On 24.12.37, Dodwell reported to Rangoon that break-up had not been commenced, but that so far there was no sign of ship being put into service. This advice was received by B.O.C. in London early in February 1938. At B.O.C. request Rugg asked Hall Angier to find reason for delay and when break-up would start. Hall Angier wrote Japan in re on 11.2.38.
- (14) On 18.2.38 Dodwell reported that vessel had entered dry-dock at Osaka, presumably preparatory to trading. Dodwell advised it was possible to apply in Japanese Court for injunction pending subsequent further legal action but that Court would require deposit, of amount to be fixed by them, before granting injunction: that legal proceedings would be lengthy, expensive, and unsatisfactory, and that a possible alternative would be, if the ship went to a foreign port, to arrest her there. B.O.C. decided not to seek injunction but await news of movement of vessel.
- (15) On 6th April 1938, B.O.C. received, through Hall Angier and Rugg, copy of a letter from Mr. Y. SATO, Hall Angier's correspondent in Japan, quoting advice from OKADA SEIICHI as follows:-



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- (a) The ship was delivered to Purchaser on 15.11.37 but on account of inability to get permission for remittance (see (11) above) Purchaser could not pass ship through the Customs until 4.2.38.
- (b) On 14.12.37, Purchaser took ship to Shirinashi River, to await Customs' permission to start breaking-up.
- (c) On 4.2.38 having received permission from Customs, Purchaser started breaking-up - probably merely removal of instruments, etc..
- (d) On 8.2.38 Purchaser received telegram "The Head of the Navy Affairs Bureau orders the ship to sail from Osaka on 21st February, 1938, and send her to Sasebo".
- (e) On 9.2.38 Purchaser received direct from Head of Affairs Bureau of the Navy the following telegram:-
"Please send the HIGASHISONO MARU to Sasebo on 22nd instant."
- (f) Thus the ship is now under the control of the Japanese Navy and nothing is known to the Purchaser of her future movements.

The above is a précis of events up to date. It appears that the Purchaser, OKADA SEIICHI, genuinely tried to keep his bargain and risked difficulty/trouble with his own Government in raising funds to pay for the ship; and that the Japanese Government having acquired the ship from Okada fall heir to Okada's obligations (to break-up or compensate).

Messrs. Dodwell & Co. have put the position before H.M.'s Ambassador in Tokio and requested that a complaint be made to the Government authority concerned.

Sgd. D.H.J.



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