


‘A Fine Passage’: Insights into Early Australian Convict Transportation

Issue 8: Illicit Trade on the Third Fleet

– Gary L. Sturgess



Albemarle 27th Sep^r 1791

Summary

Australia's Third Fleet was a vast smuggling enterprise, with six of the ten ships carrying large quantities of metal in breach of their contract with the Navy Board to carry out convicts, and their licence from the East India Company which permitted them to carry home cotton from Bombay after they had offloaded their human cargo.

The Company was aware of these illicit trade goods before the fleet sailed, and when the ships arrived at Bombay, they were searched and the metal confiscated. Six years of litigation followed, leading to massive losses on the part of the contractor, as much as £3.5 million in today's values.

This is a ripping yarn: apart from the smuggling, one of the ships was taken by pirates off the coast of India, another two were captured by French privateers on their return to English waters. These are stories we all should know.

Australia's Third Fleet

The contract for Australia's third fleet of convicts was signed with the firm of Camden, Calvert & King on the 18th of November 1790. They were to find sufficient tonnage to carry out 2,000 convicts along with the stores and provisions necessary to support them throughout the voyage. This represented a fleet of 10 ships, six of them supplied by Calvert and King (the active partners in the firm), with the others being sub-contracted to other merchants.

The partners had 19 vessels at sea at this time, representing around 5,000 tons of capacity, but most of them were tied up – in the slave trade, on voyages to Botany Bay and China (as part of the Second Fleet) and clandestine expeditions to the East Indies (disguised as foreign vessels), to the Southern Whale Fishery and the Baltic. To fulfill their obligations for the Third Fleet, it was necessary for them to purchase four more ships, expanding the tonnage of their fleet by one third over a period of several weeks.

Five of the ten ships taken up for the Third Fleet were whalers, the first time that whaling merchants had invested in the Botany Bay trade. Calvert and King hoped that the other five might be employed by the East India Company to carry back tea from China. They had reason to be hopeful – all of those employed for the Second Fleet had been taken up as 'extra ships' in the China trade.

But on this occasion, the 'shipping interest' within the Court of Directors pushed back, and the best that they could negotiate was a licence allowing them to return with a cargo of cotton from Bombay at their own risk. This left them exposed to a volatile market, one which the Company itself had largely abandoned.

Clandestine Trade

Having invested heavily in the East Indies over several centuries, the Company had been granted exclusive rights over British trade within the Indian and Pacific Oceans. By 1790, the government had begun to whittle away at this monopoly, but the Directors still jealously guarded their trading rights, which were protected by legislation.

Calvert and King were fully aware of this, having sent a number of their ships to the East Indies, one under contract to the Company, the others secretly (and

unlawfully) registered under foreign flags. In the advertisements published for the Third Fleet, the Navy Board had warned the contractors that they were not to interfere with 'the Company's exclusive commerce', and the licence clearly stated that it covered the transportation of convicts to New South Wales and the shipment of cotton from Bombay, and nothing else.

Calvert and King gave a commitment that the owners, masters and mariners of their ships would not engage, directly or indirectly, in any kind of commerce within the limits of the Company's charter. Those who did so would be treated as illicit traders, and the goods they carried and the ships which they carried them, would be forfeit, with financial penalties besides. Their contract with the Navy Board also stated that any spare capacity on the ships was reserved for government – the masters were not permitted to carry any private trade.

They had no intention of honouring these commitments: Calvert and King proposed to pay for the cotton by secretly shipping out large quantities of metal – iron and steel, lead and copper – for sale at the Portuguese port of Goa, some 400 miles to the south of the Company's port at Bombay.

Someone was needed to purchase the cotton ahead of the ships' arrival and to make arrangements for the sale of the metal, and the man they eventually settled on was John Tasker, a former ship's captain who was going back to India to take up the post of Master Attendant at the port of Bombay. A senior official with the East India Company, he was to assist them in breaking the Company's regulations.

Loading the Metal

The metal would be shipped to New South Wales in the six vessels owned by Camden, Calvert & King: the four that were going to Bombay – the *Admiral Barrington* (527 tons), the *Albemarle* (520 tons), the *Queen* (387 tons) and the *Active* (350 tons) – and the two whalers – the *Matilda* (459 tons) and the *Mary Ann* (298 tons) – and given that it was in breach of both licence and contract, it was essential that it be kept secret.

Prior to being taken into service, the Botany Bay ships were inspected at Deptford, the Royal Navy's dockyard in the Thames, and that was where the first of the stores and provisions were loaded. This was all done under the supervision of the Navy Board's agent at Deptford, and in late 1790 and early

1791, this was Lieutenant James Bowen, who had been appointed eighteen months before, as the Second Fleet was being commissioned.

Bowen would later claim that he had no knowledge of the metal, but we now know that this was a lie: there is documentary evidence that the first of iron and copper was sent on board the *Active* and *Albemarle* while they were still moored at Deptford. And the master of the *Albemarle* was George Bowen, James Bowen's younger brother.

Another brother, Richard Bowen, had been appointed as the naval agent on the *Atlantic*, the other Third Fleet ship that was to sail to Bombay for cotton. Officially, he was the Navy Board's agent on board that ship, but Richard was close to the owner of the *Atlantic*, and he is frequently described in contemporary records as the ship's captain.

It would have been difficult for James Bowen to have missed these shipments: on the 31st of January, for example, a lighter came alongside the *Albemarle* while she was still at Deptford, with 716 barrels of iron, 160 bundles of iron rods and 80 bundles of steel.

Some cases of metal were labelled as ship's stores, which would have placed them outside the prohibition on trade, and some of the iron bars and lead pigs were described as ballast. It was nonsense to suggest that such vast quantities of metal were necessary for the voyage, but it is interesting that they attempted such a ruse. The Navy Board's contract had been specifically amended for the Third Fleet to make allowance for ship's stores. We do not know who proposed the change, but Alexander Davison, a London merchant who was heavily involved in supplying stores for the colony, warned the government that this loophole would be exploited by unscrupulous men. His warnings were ignored.

We only need to catalogue the metal that was shipped to appreciate that they vastly exceeded what was required for the voyage: 1,770 bars of iron, 250 faggots of steel, 464 bundles of rod iron, 410 tons of iron pig ballast, 397 lead pigs, 80 boxes of 'Japan copper', 2,000 plates of brass India copper, 500 plates of trough copper and 1,100 sheets of copper, among other things.

Concern among Company Officials

Company officials had been worried about the prospect of illicit trade from the outset, probably because they knew that Calvert and King had been active in the clandestine trade. In mid-December 1790, a month after the contract for the Third Fleet was signed and three months before the ships sailed for New South Wales, the Court of Directors wrote to the Bombay Council, pointing out that the licence had been granted on the explicit condition 'that the said Ships are not to interfere with any other part of the Company's exclusive Commerce'. They concluded: 'We. . . strictly enjoin you to be very careful that the same be not infringed'.¹ The officials in Bombay understood that this was not just a routine caution, writing in response: 'Your instructions herein shall engage our particular attention when any ships of this description make their appearance'.²

One of the Company's agents at Gravesend had also been given detailed evidence of the metal that had been loaded on board – 'quantity, quality, marks and numbers' – and this information was passed on to the Bombay Council long before the Third Fleet ships arrived at that port.

In New South Wales

Government officials at Port Jackson were also on notice. Philip Gidley King, the Lieutenant Governor of Norfolk Island, learned about the metal in July 1791, while he was at the Cape of Good Hope on his way back from England. He did not have all the facts, but King was suspicious of the role played by James Bowen, whom he knew was related to the master of the *Albemarle*:

Whether the Naval Agent Mr Bowen has deceived government or whether the Masters of the ships have deceived him I know not, but I am credibly informed that each transport has upwards of 200 tons of iron, copper & lead in them besides other articles. I hope Mr Phillip can seize it, as so much more beef & pork would be acceptable to the colony.³

King arrived in Port Jackson on the 21st of September, five days before the *Active* and the *Queen* and three weeks before the *Barrington* and the *Albemarle*. He would have immediately reported this information to the Governor, but from mid-October, it was obvious to everyone resident at Sydney Cove, as boats were observed to be shifting large quantities of metal from the other four ships to the *Active* and the *Albemarle*.

Phillip called the masters to a meeting at Government House, where they explained that the metal had only been taken on board after all of the government's stores and provisions had been received. This was probably true, but it conveniently overlooked the clause in their contract which reserved all of the spare capacity to government.

They also insisted that the exports were public knowledge. They had declared the metal at the Custom Office – it would have been foolish to do otherwise – but the Customs had no role in the enforcement of Navy Board contracts or the Company's licences. James Bowen was undoubtedly aware of the cargo, but he was not supposed to be and he would later insist that he wasn't. The argument that they were not in breach of the licence because they proposed to offload the metal at Goa rather than Bombay was actually an admission of guilt.

Phillip reported the whole affair to the Home Secretary in London, pointing out that they had a desperate need for limestone in the colony (for building), which could have been shipped on these vessels. He also explained that he had not confiscated the metal because he was unsure of the limits of his authority, and there was no way they could have used such large amounts of these materials.

Preparations at Bombay

John Tasker arrived at Bombay in November 1791, and immediately set about buying up cotton. The crop that year had been good, but there was a severe famine on the west coast, and there were not enough men for the harvest: prices were high as a result. In early December, Tasker sent a pattamar boat down to Goa to await the ships' arrival and make preliminary arrangements for the sale of the metal.

When they had still not arrived by May of the following year, Tasker wrote to Camden, Calvert & King, worried about what would happen if the ships did not arrive before the monsoon set in. The cotton would have to be warehoused, which would be extremely expensive and possibly render the whole enterprise unprofitable.

The Queen

The *Queen* arrived at Bombay in mid-July. She was searched and cleared, and by the end of September, she had been dispatched for Europe with her cargo of cotton. She touched neither at the Cape of Good Hope nor at St Helena, the Company's mid-Atlantic way-station, and by the time she arrived at Plymouth in early February 1793, only half a dozen of her crew were capable of coming on deck. A correspondent in the *Times* wrote: 'Had the wind been unfavourable, they must all have perished'.⁴

The Active and the Albemarle

The *Active* and the *Albemarle* had made their way into Goa in late May, just ahead of the monsoon. They had missed Tasker's pattamar boat by days, and the subsequent correspondence had to be conducted using overland couriers. The Company's officials at Bombay were also advised of their arrival, and sent down an agent to collect evidence against them.

Bowen was able to sell a small amount of their cargo at Goa, and he advised Tasker that they would have to ship the rest to Bombay. As a Company official, Tasker could not be openly involved in the importation of contraband, so he convinced his business partner, a leading Parsee merchant named Pestonjee Bomanjee, to lend his name to the venture. As soon as the monsoon was over, Tasker sent down the *Hero*, a grab or brig owned by Bomanjee but managed by Europeans, along with two pattamar boats to collect the cargo. The *Active* and the *Albemarle* sailed from Goa at the end of September, followed by the other three vessels.

They were all were closely searched on their arrival at Bombay, and the elaborate fiction concocted by Tasker was blown away when a number of the ships' officers – the first and third mates of the *Albemarle* and the third mate of the *Active* – gave sworn statements to the authorities along with copies of journal entries describing precisely how much iron, lead and copper had been brought on board and when. Together with the statement of the Gravesend agent and documents sent back from Goa, there was irrefutable evidence of a conspiracy.

The consequences for Camden, Calvert & King were most serious. The *Active* and the *Albemarle*, along with their illicit cargo, would be confiscated, and

possibly the *Admiral Barrington* and the *Queen*. They would be fined twice the value of the metal. The masters of the two ships would forfeit the bonds they had provided to the Company before sailing and they would be prevented from ever sailing to the East Indies again.

The Bombay officials left most of these matters to be resolved by the Company's officials at home: the *Active* and the *Albemarle* sailed for Europe at the end of December 1792 carrying 900 and 1,585 bales of cotton respectively. When the case was brought before the Mayor's Court at Bombay, neither John Tasker nor Pestonjee Bomanjee appeared to contest the proceedings, and the metal was formally sequestered.

Pirates

The *Barrington* had been leaky throughout the voyage, and she had been delayed by adverse weather on her way north: she limped into Trincomalee on the northern coast of Ceylon (now Sri Lanka), 'in a most shattered & disabled condition'. Tasker did not learn of this until November 1792, when he wrote to Camden, Calvert & King warning that the cost of refitting her at Bombay would be enormous, and his final act as their agent would probably be to sell her.

Several weeks later, he was informed that she had been seized by Malwan pirates as she made her way up the Malabar Coast. The Malwani operated out of a fortified harbour around sixty miles to the north of Goa, protected by Shivaji, the Maratha Raja of Kolhapur. If foreign vessels entered their waters without a pass which proved they had paid a levy – protection money, as the British saw it – they would be taken.

She was captured on the 18th of December 1792, carried into port and plundered of her stores and 200 tons of mahogany she had brought on board, illegally, at Batavia. Negotiations were opened through Shivaji, and when the captain was finally allowed on board, he found the ship was incapable of being salvaged, and he abandoned her.

Tasker submitted a claim to the Bombay Presidency for 179,364 rupees (around £20,000 at the time) for the ship and stores, the cargo of mahogany, the personal belongings of the officers and crew, and the homeward freight of cotton which had been foregone. It was hoped that Shivaji would compensate

them under the terms of a recently-signed treaty, but if reparations were ever paid, it was some years later.

Privateers

Nothing more was heard of the *Active* and *Albemarle* until May 1793, when two East Indiamen arrived in the Thames with the news that they had spoken to them north of the Equator. All was well, but war had recently been declared with France and they were sailing without a convoy.

Several days later, intelligence arrived that the *Active* had been taken by a French privateer off the Scilly Isles and carried into Brest. Stories were circulating that the *Albemarle* had also been seized, but the first credible news of her capture came several weeks later when two of her passengers were released by the French.

The *Albemarle* had been taken by the *Duguay Trouin* (450 tons), a corsaire fitted out by merchants at St Malo, an ancient port on the coast of Brittany that was renowned for smuggling and privateering. She was carried into Morlaix, and George Bowen and his two passengers were paroled at St Malo. Bowen was released in mid-July, but it was not until December that the last of the crew were exchanged for French prisoners of war. The ship and her cargo were sold for a total of 2.6 million livres, the cotton being worth 35 times the value of the vessel.

The *Active* had been captured the same day as the *Albemarle* by *L'Ambitieux* (70 tons), which had sailed from St Malo in early March, soon after the outbreak of hostilities. The crew were taken to prison hulks at St Malo: it is difficult to establish their release dates, since another vessel of the same name was captured around the same time. The *Active* and her cargo were sold for 1.4 million livres.

Legal Disputes

Calvert and King had insured their ships and their cargoes against capture, and once Lloyds had confirmed that they had been taken, they submitted a claim to the underwriters for £34,000. They refused to pay, arguing that by carrying on an illicit trade, the plaintiffs had forfeited all rights to their insurance, and that by stopping at Goa they had delayed their departure from India, resulting in their

return to European waters after the outbreak of war. Calvert and King immediately launched a series of legal actions.

The first of these cases came before Lord Kenyon, Chief Justice of the Court of King's Bench, and a special jury of merchants at Guildhall in June 1794. The plaintiffs argued that the legal status of the inward cargo was a matter between themselves and the Company and irrelevant to a claim based on the seizure of the ships on the homeward voyage. Kenyon disagreed: 'The underwriters could not suppose that the laws of the land would be violated by those whose duty it was to obey them. They had no reason to suppose these ships would stop at Goa'. In his closing address to the jury, his Honour made a number of pointed remarks about Calvert & King's ethics:

On the character of the plaintiffs, his Lordship said he should make no observation, but leave it to the commercial world, to draw from their conduct that conclusion which inevitably must be drawn by all who had seen, heard, and read what their conduct had been. The underwriters ought to have been informed of everything, whereas his Lordship was clearly of opinion that, in this case, there had been a fraudulent concealment of facts.⁵

The jury returned a verdict for the plaintiffs, but this was later overturned on legal grounds. There followed a series of actions and appeals which made their way through the courts over the next four years. Calvert and King eventually applied to the Court of Exchequer Chamber for relief, but in May 1798, Chief Justice Eyre came down firmly against them:

. . . it might have been reasonably supposed no man who had a regard for his reputation as a merchant, or had any sense of truth and private honour, would have suffered to have [such a verdict] stood against him upon the public records of one of the King's supreme Courts of Justice.⁶

An appeal to the House of Lords was considered but not pursued. They had lost a fortune: the original cost of the metal, the capital value of two ships and their cargoes of cotton, as well as the legal expenses involved in four years of court proceedings, as much as £3.5m in today's values, a vast sum of money for an 18th century partnership. They had also established a legal precedent that would be cited by authorities for a century or more – 'That which is unlawful in itself and which is a public wrong, cannot be the ground of an action'.⁷

Consequences

There was a superficial inquiry by the Navy Board, but James Bowen lied and there was no way of establishing otherwise. No attempt was made to pursue the breach of contract, and in January 1794, the Navy Board awarded Camden, Calvert & King with another contract to carry out convicts and stores to NSW in the *Surprise* – although a new clause was inserted in the contract, making it clear that private trade goods could be seized by the NSW Governor. In a letter to the Acting Governor, the Home Secretary commented on the ‘frauds’ that had previously taken place on some of these ships.⁸

There is no evidence that the East India Company took any action against Calvert and King, although they actively cooperated with the defendants in the various insurance cases. But they also allowed the *Surprise* to sail to Bengal after she had deposited her convicts at NSW, to carry home a cargo of sugar.

Camden, Calvert & King survived, albeit somewhat weakened. James Bowen served with great distinction on Lord Howe’s flagship at the Glorious Fourth of June, a great naval victory over the French in the spring of 1794. He remained on active service throughout the war, although he kept his links to the transport service, and at the end of the war, he was appointed as a commissioner of the Navy Board. George Bowen returned to the Royal Navy, and was eventually given command of his own ship. Robert Mash, the master of the *Active*, was allowed to return to the East Indies as the master of ‘extra ships’ taken up by the Company for trade.

The convicts had not fared so well – the average mortality rate on the Bombay-bound ships was seven percentage points higher than the rest of the fleet. The difference was the lives of 68 men and women.

¹ Court of Directors to the Bombay Council, 16 December 1790, IOR/E/4/1007, pp.153-154

² Bombay Council to the Court of Directors 18 January 1792, IOR/E/4/471.

³ King to Nepean, 21 July 1791, TNA CO201/6/333aa

⁴ *Times*, 5 & 6 February 1793, p.3.

⁵ *Times*, 19 June 1794, p.3.

⁶ *Camden and Others v Anderson, In Error*, Exchequer Chamber, 19 May 1798, 1 Bos. & Pul. p.272

⁷ See, for example, Charles Abbott, *A Treatise of the Law Relative to Merchant Ships and Seamen*, London: E. & R. Brooks and J. Rider, and J. Butterworth, 1802, p.57; Platt Potter, *Sir Fortunatus Dwarries: A General Treatise on Statutes. . . With American Notes and Additions*, Albany, NY: William, Gould & Sons, 1871, pp.158-159.

⁸ Dundas to Grose, 15 February 1794, TNA CO201/11/11-13