

1739. June 5.

Competition, SIR JOHN HOME of Manderston, with MR. ALEXANDER LIND,  
Admiral-Depute upon the East Coast.

## No. 5.

Whales do  
not come  
under a grant  
of wreck.

A whale having been cast ashore in the barony of Coldingham, a question arose betwixt these parties, to which of them the same should belong.

Sir John claimed it, in virtue of charters from the Crown disposing the said barony to him and his predecessors, containing also the clause "with wreck and ware;" under which grant of wreck he pleaded the subject in controversy was comprehended; and, in support thereof, it was observed, That, by the civil law and law of nations, the right of wreck, which never had been in the possession or property of any one, was given to the persons who had saved or preserved the subject (which he had done in this case;) as also, that the policy or interest of different nations had made some alteration from the natural rule of equity of giving to the preserver; for instance, in Scotland it had been thought good policy to give the right of wreck in general, without any distinction, as escheat to the Crown; and that, under this clause, whales behoved to be comprehended, as they were not deemed Royal fish, either by the law of this, or any other country in Europe (England excepted;) for proving whereof, the following authorities were referred to; Ordinance of Lewis XIV. *in anno* 1681, § 53. as translated by the anonymous author of a Treatise of the Dominion of the Sea and Sea-laws; Craig, Lib. 1. Dieg. 16. § 38.; Laws of Alexander II. Chap. 25.

Pleaded for the Admiral-depute: That, as whales were *inter regalia*, the one in question behoved to belong to him, in virtue of his commission from the Crown; and that they were always deemed Royal fish, appears from Balfour's Practics, Chap. 8. Fol. 191.; Manuscript of the Forest Laws in the Advocates' Library, Tit. De Judicibus; Welwood's Treatise of the Sea-laws, Tit 2. Of the Judge-Ordinary in sea and sea-faring causes; Stair, Lib. 2. Tit. 5.; and the Decisions, Procurator-fiscal of the High Court of Admiralty against John and Andrew Tods, *in anno* 1665; Earl of Rothes against Murray, *in anno* 1720; *2dly*, They could not be considered as falling under the notion of wreck, and so passing to the Baron under that clause; as was evident from the 25th Chap. De Statuta Alexandri II.; Skeen in his Interpretation of Wreck of the Sea; and Craig's definition of that word. See APPENDIX.

The Lords found, That whales do not come under the grant of wreck.

*C. Home, No. 118. p. 189.*

1751. February 19. The EARL of PANMURE *against* JAMES BISSET.

## No. 6.

The valuable  
effects of ene-

During the Rebellion a French ship came into the river of Montrose, where she run a-ground, and was damaged, so as to be unfit for sailing; but the rebels