

Decisions of the Court of Session: From the Year 1733 to the Year 1754, Volume 2

By Patrick Grant Elchies, Court of Session [page 519](#)

WRECK.

No. 2. 1751. Feb. 19. THE EARL OF PANMURE *against* BISSET AND ROSS.

IN 1745 a French ship, La Seine, having on board the late Lord John Drummond, and his French regiment was chased into the harbour of Montrose, then possessed by the Rebels, and some time after being lost on a sand bank, by which her back was broken as the seafaring people expressed it, lay there till the Rebels fled northward before the Duke of Cumberland; and then Captain Dove of the Hound sloop seized, and because he could not carry her away, gave commission to Bisset to sell her, which he did. Earl of Panmure, as Depute-Admiral sued Bisset for the price, and also Ross, for some things taken by him, in the Court of Admiralty, and recovered sentence. A bill of suspension being presented to us, we all agreed that it was no capture of Captain Dove's; though, if it had, it might have been a question what would be the effect since he sued no condemnation. 2dly, We doubted whether it was properly a wreck, since the owners were not only known, but had unwillingly deserted it for fear of being made prisoners, though jetsam may fall under the Admiral's right; or whether 3dly it should not rather be considered as enemies goods, and if so, then whether confiscated to the Crown, or if *cedit primo occupanti*. As to ordinary moveables this last possibly might be; but as to *mobilis majora*, as ships or perhaps great artillery, these could not belong to the first finder. And if they belonged to the Crown, then the question was, Whether they fall under the Admiral's gift? I quoted the case of the Pirates ship and goods in Argyllshire in 1720, and even the remains of the Armada. However, as Captain Dove or the defenders had no right, we agreed to the sentence of the Judge-Admiral, which finds that the Admiral has right to the keeping, preserving, and intromiting with the subject, preferably to Dove or the defenders, subject to the claims of those who can hereafter make it appear that they have right to the same.