

make the same furthcoming when this debt should be craved.—THE LORDS  
repelled the exception in respect of the reply.

*Auchinleck, MS. p. 77.*

No 57.

S E C T. VII.

The appretiation in the confirmed testament may be corrected by a  
confirmation *ad male appretiatata*, or by proof of higher value.—Li-  
cense to pursue.

1610. July 19. PATERSON *against* BANNATYNE.

No 58.

HE who was cautioner for an executor, in confirmation of a testament, will  
not only be decerned to make the gear confirmed furthcoming to the creditors at  
the prices contained in the confirmed testament; but also for greater prices, if the  
goods be decerned to be of greater avail nor the prices confirmed.

*Fol. Dic. v. 1. p. 275. Haddington, MS. No 1976.*

1621. December 14. HALYDAY *against* ———.

No 59.

IN an action pursued by Halyday against ———, for payment of certain  
sums, and goods pertaining to the defunct, unto the pursuer, as the executor-  
dative decerned *ad omissa*, and having license to pursue therefor, the LORDS  
found, that there ought to be a testament of the omitted goods acclaimed first  
confirmed before the pursuit could be sustained; and would not find process  
upon the license to pursue an action for goods omitted out of the principal con-  
firmed testament, albeit they sustained pursuits at the instance of the executors  
decerned in principal testaments, upon license to pursue before confirmation of  
the principal testament.

Act. *Belshes.*

Alt. *Henderson.*

Clerk, *Gibson.*

*Durie, p. 7.*

1627. November 24. GOURLAY *against* ———.

No 60.

IN a suspension betwixt Gourlay in Leith and ———, anent the exhibition  
of a coffer, for the which there was decret given at the instance of the charger,

An executor  
confirmed a  
coffer in the

No 60.  
hands of a third person, to a certain value. Having pursued the holder for exhibition, he offered to pay the value confirmed, and insisted, if the executor allege it to be worth more, he must add the same to the testament. It was found, that the executor was not bound to add the greater price till the coffer was produced.

as executor confirmed to the defunct; and in the testament among the inventory of the goods, the coffer being given up by the executor at the estimation and value of 100 merks; the suspender offering to pay that 100 merks, the price put by the executor's self thereon in the said confirmed testament; whereby he *alleged* he ought to be freed of exhibition of the coffer, specially seeing it was his own estimation, confirmed and sworn with the rest of the inventory the time of the confirmation; and, if he would allege the same to be of any more worth, he ought to add the same to the testament, and confirm it before he can be heard to pursue or seek the samen; and there is place to the executor *ad omissa*, or *male appretiata*, to acclaim the same, and not to this executor, who hath given up the foresaid price;—THE LORDS found, that the executor confirmed, notwithstanding of his up-giving of the coffer at the foresaid price, might seek exhibition of the coffer, and was not holden to accept the said price confirmed in case the coffer be yet extant; and that the executor needed not to add the greater price to the testament, to the effect the same should be confirmed, until the time the same were first exhibit, that he might know at what avail and further price the same should be confirmed; and, therefore, that the defender was not freed by the offer of the price confirmed, but was holden to exhibit the coffer, seeing it was not controverted by him, but that it was extant.

Act. Hope.

Alt. Mowat.

Clerk, Gibson.

Fol. Dic. v. 1. p. 275. Durie, p. 316.

1632. March 10.

L. LUDQUHARN against L. HADDO.

No 61.  
An executrix was found liable to account for goods at the value given up in the confirmed testament, though they were sold at less prices; and, at the time of confirmation, she had protested only to be liable for the prices she should get for them.

THE Lady Haddo having confirmed her husband's testament in April after her husband's decease, who died in October preceding; and wherein he left his bairn, being then in his mother's womb, now this party, who was his only bairn, his executor; and she having obtained a factory of the bairn's tutor; after the years of tutory, there were actions *hinc inde* intended betwixt them for tutor-compts, *directa et contraria tutela*; in discussing of the articles whereof, there was an article, by the which the Lady and Ludquharn, her second husband, were charged to compt, for the goods contained in the confirmed testament, given up by herself, and intromitted with by her; and for the prices of the corns pertaining to her husband, of the lands, which then at his decease, viz. in October, he had in mansing, and the increase thereof, as the same was given up by her; whereanent she *answering*, That albeit she gave the same up, yet seeing the Commissary of Aberdeen, and all the other Commissaries of Scotland, in the confirmation of testaments, have a common estimation of the increase, and that the prices were given up probably by her, as she esteemed the same, yet of no reason ought she to be burdened with more quantity nor the corns truly did extend to, nor with other prices than they gave, and were sold