

No 9. same were opened, thereby to defend himself from accounting for his intromissions in that interval.

*Fol. Dic. v. 1. p. 460. Forbes.*

\* \* \* This case is No 121. p. 1020.

1723. November 29.

LADY DOWAGER of STRATHNAVER *against* CAPTAIN ROSS of Daan.

No 10. My Lady Strathnaver having obtained a decree of constitution against her son, the present Lord Strathnaver, upon several articles, *1mo*, The bygones of her liferent annuity; *2do*, For 4000 merks, as the liquidated sum in her contract of marriage, in place of her terce of moveables; *3tio*, For her children's aliment, funeral expenses, &c.; upon this decree she recovered a moveable subject, to the value of L. 800 Sterling, belonging to the deceased Lord Strathnaver. Thereafter, in a pursuit at the Lady's instance for recovery of her bygone annuities, the question occurred, Whether the foresaid L. 800 must be imputed into the bygone annuities as *durior sortis*, or into the other articles of the decree? It was *argued* for the Lady, *1mo*, That application *in duriozem sortem*, as a rule that in many cases contradicts equity, has never universally obtained with us. *2do*, The said L. 800 being a moveable subject, falls naturally, in the first place, to extinguish the moveable articles,—which was found relevant. See APPENDIX.

*Fol. Dic. v. 1. p. 460.*

See APPENDIX.