

The Lord Ordinary *repelled the reasons of reduction.*

But upon advising a petition and answers the Court altered his interlocutor. Lord Kilkerran's note of the case is as follows:

“*Jan. 19, 1741.* The Lords found that Martin, one of five persons inserted in the contract to have been intended to sign the contract, not having signed the contract, the contract is void.

“It is a maxim in the matter of mutual contracts that one party can not be bound and the other loose; wherefore if Bedlormy could in this case have been freed, the decision was just; and there is no doubt but had they been intended to be bound to him for the L.100 conjunctly and severally, he was freed if any one did not sign; for then he had not the security he had stipulated; nor could these who signed have been heard to say that they were willing to pay the whole as if all had signed, so *nihil tibi deest*; for that was to have made him accept of a different contract, and so it was decided *March 25, 1634. Lady Ednam* against *Stirling*, (*Spotiswood voce Contract.*) taken notice of in this petition. But then, as they were not intended to be bound for the L.100 conjunctly and severally, but only conjunctly, and so, each for his own part, some of the Lords were of opinion that Bedlormy could not have been free as to those who had signed, in regard it resolved into so many different contracts with the several persons; as to which severally his renunciation implied an obligation to make over such right as he had, on payment of their part of the money, and consequently the contract was binding upon the signers for their part of the money, agreeable to the decision observed also by Spotiswood, same *voce* contract *February 24, 1632. Lamington* against *Foulis*, taken notice of in the answer.

“There was but little reasoning on this case, when this interlocutor was pronounced; and it is a case of that kind that must have the less weight, as the ugly appearance of Bedlormy's behaviour, in bringing about this contract with poor, ignorant people, must have had an involuntary bias with the Court.

“However, upon farther reflection, I incline to be of opinion with the decision, on the foundation of the general maxim above mentioned, for I think Bedlormy must have been free, had he been so minded, even as to the signers; on the ground that he should have been heard to say, that he would not at all have transacted and agreed to renounce his pretensions to the succession, but in the view of a sum certain, and of being free of all pleas whatever, whereas by one standing out, he lay exposed to the same plea, and at the same expense as that plea for the whole succession should have cost him.”

*N. B.* This case is reported by Lord Elchies, (*Locus Pœnit. No. 5.*)

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1741. *February 26.* REPRESENTATIVES of COMMISSARY MACKENZIE  
*contra* ANNA LIDDEL.

EVEN a first adjudication will be allowed to pass, reserving defences *contra executionem*, where a signal prejudice would arise to the pursuer of the adjudication, by putting off the decerniture, till the defences, however relevant, should be determined.

For which reason, it was allowed in this case, where the granter of the bond was only an apparent heir of great age, not in the kingdom, and alleged to be dead, the proof whereof was reserved *contra executionem*.