in it, and in it the defenders took out confirmation. It is *forum conveniens*, and were there any competent objection it should have been waived and the jurisdiction prorogated. But I concur in holding that there is jurisdiction over the defenders in a question affecting the amount of the deceased's estate. I think, further, that by taking out confirmation the jurisdiction has been by implication prorogated. The defenders have had recourse to this jurisdiction, and must answer in it." . . .

The defenders appealed to the Court of Session, and argued — The first plea-in-law for the defenders was well-founded. The Court of Session was the only competent tribunal where both executors and almost the entire estate were without the Sheriffdom. The mere fact of confirmation could not give the Sheriff jurisdiction in such a case—*Watt* v. *Richmond's Executors* (*per* Lord Fraser, when Sheriff of Renfrewshire), reported in Guthrie's Sheriff Court Cases, 241. The furthest point to which the Court of Session had extended its jurisdiction over an executor residing in a foreign country appeared from *M'Morran* v. *Cowie*, January 16, 1845, 7 D. 270, 17 Scot. Jur. 135, and *Ferguson* v. *Douglas, Heron, & Company*, 3 Pat. Ap. 503 (*per* Lord Loughborough), p. 510; *Black* v. *Duncan*, December 18, 1827, 6 S. 261; *Magistrates of Wick* v. *Forbes*, December 11, 1849, 12 D. 299, 22 Scot. Jur. 71. [The Lord President—"Is the Sheriff's position not supported by the case of *Preston* v. *Melville*, March 29, 1841, 2 Rob. App. 88, 8 Cl. & F. 1 (*per* Lord Chancellor Cottenham), p. 12?"] That view of the decision in the case of *Preston* had been doubted in the House of Lords in *Orr Ewing's Trustees* v. *Orr Ewing*, July 24, 1885, 13 R. (H. of L.) 1. The view of the Sheriff here was just the contention of the pursuers in *Orr Ewing* v. *Orr Ewing's Trustees*, February 29, 1884, 11 R. 600, which was negatived on appeal. Even in an action on a contract the *locus solutionis* of which was within the Sheriffdom, a foreigner must be cited personally before the Sheriff had jurisdiction over him—*Pirie* v. *Warden*, February 20, 1867, 5 Macph. 497. The form of the bond of caution had nothing to do with the question. The liability of a cautioner was no higher than that of his principal, and if the latter was not subject to the Sheriff's jurisdiction neither would the former be liable in spite of the clause in the bond.

No appearance was made for the respondent.

At advising—

Lord President—I am disposed to sustain this appeal, and to hold that the Sheriff has no jurisdiction. If these executors had been foreigners it is evident that they could only have been sued in the Supreme Court, which is the *commune forum*. Where one executor lives within the Sheriffdom and is administering the estate, it might be otherwise, and I feel much inclined to agree with Lord Fraser in the view which he took in the case which has been cited to us. No doubt confirmation was obtained in the Sheriff Court of Dumfries, but the reason for that was that the deceased was domiciled in the county. The executors are not connected with that Sheriffdom in any way, and they went there only to get confirmation, and so obtain possession of the executry estate. They got possession of it on the footing that they should duly account for it, but they can only be called to account for it where they may be competently cited. There is nothing in the fact that the Sheriff granted confirmation to confer jurisdiction on him in such a case as the present. The executors have carried the estate outside the Sheriffdom, and in these circumstances I cannot see on what ground the pursuer could maintain that there was jurisdiction. If, as Lord Adam has remarked, the mere fact of confirmation gave jurisdiction against executors exclusively in the confirming Court I could understand the pursuer's position. But as an executor may be sued anywhere where he himself is, and an action may be brought against him in any Court to whose jurisdiction he is himself subject, it is quite plain that there cannot be exclusive jurisdiction in the Court from which the confirmation proceeded, and if there is not exclusive jurisdiction, I do not see how the fact of confirmation can confer any jurisdiction unless the executor is otherwise subject to it. I am for sustaining the defenders' first plea-in-law.

Lord Mure—I am of the same opinion. At first I had some doubt on the point, and felt inclined to hesitate in coming to a different conclusion from the Sheriff. I was apprehensive that a decision contrary to his views of jurisdiction might make it necessary in all such cases for parties to be put to the expense of coming to the Court of Session as the *commune forum*. But I think this may be obviated wherever there is one executor subject to the jurisdiction of the Sheriff Court of the deceased's domicile. I further agree that there is no exclusive jurisdiction in the Sheriff Court which granted confirmation.

Lord Shand and Lord Adam concurred.

The Court sustained the plea of no jurisdiction and dismissed the action.

Counsel for Defenders (Appellants)—Lorimer—Boyd. Agent—Thomas Hart, L.A.

Friday, December 17.

FIRST DIVISION.

[Sheriff of Aberdeen.

STRONACH (WILSON'S TRUSTEE) *v.* BARR (FRASER'S TRUSTEE).

Process—Res judicata—*Identity of Interest.*

Goods were supplied for use in a business which was being carried on in name of W., and of which he was ostensibly proprietor. He became bankrupt. In an action by the assignee of the persons who supplied them, against F., and also against himself as trustee in W.'s sequestration, to which office he had been appointed, it was decided by a final judgment that the true principal in the business for which the goods were supplied was F., and that the goods had been really supplied on his credit. Decree was therefore given against F., as well as against W.'s trustee, for the price. F. also became bankrupt. In a competition between W.'s trustee and F.'s trustee for the articles which the creditors had supplied, *held*

that it was *res judicata* by the decision against F. in the former action, in which the interest of W.'s creditors had been represented by his trustee being called as a defender, that the articles were the property of F., and *therefore* that they fell to the trustee in his sequestration.

In November 1884 an action was raised in the Court of Session by David Littlejohn advocate in Aberdeen, as assignee of James Garvie & Sons, painters, &c., there, and of a number of other persons, creditors of John Ingram Wilson and William Alexander Fraser, against Fraser and also against Littlejohn himself, as trustee on the estate of Wilson, who had been sequestrated in January 1884, concluding against the defenders, "conjunctly and severally, or severally," for payment to the pursuer as such assignee of the sums to which Fraser and Wilson were said to be indebted to these creditors.

Fraser had carried on business as a baker and confectioner in Aberdeen, and Wilson had been employed as his foreman baker. In the action it was alleged that a transaction by which an apparent transfer had been made by Fraser to Wilson of his business, stock, and plant for a sum of £1196 was merely simulate, and a device to escape the proceedings of his creditors, and that Fraser had never ceased really to conduct the business and to be the true owner; that there had been also a building speculation entered into by Fraser in name of Wilson as feuar from him (Fraser), but really in his own interest, under which the tradesmen whose claims were now represented by the pursuer as assignee had large claims against Fraser as the true principal in the transactions.

The pursuer pleaded—"The said John Ingram Wilson being merely agent, and the defender W. A. Fraser being the true principal in the transactions giving rise to the accounts sued for, the pursuer is entitled to decree against the defender Fraser as concluded for."

Decree in absence passed against the defenders. Thereafter Alexander Stronach junior, advocate, Aberdeen, became assignee to the creditors' claims and to the decree in place of Littlejohn.

After decree had passed in absence it was opened up by way of suspension by Fraser, who maintained that the transactions between him and Wilson were real transactions, and that he was not thereafter, as alleged, the true principal in the bakery business; that he feued the ground he had acquired to Wilson, and had no interest except as a superior in the matter, and was not a partner with him, nor engaged in a joint-adventure with him, nor was he the true principal in the transaction.

The pursuer maintained in the suspension his averments in the condescendence as above mentioned, and pleaded—"The complainer [Fraser] having been truly the principal, or party substantially interested in the transactions which gave to the debts for which the said decree was granted, the said decree was just and reasonable, and ought not to be suspended."

This suspension went to proof before Lord M'Laren, Ordinary. His Lordship repelled the reasons of suspension, stating in a note his opinion that Fraser, the complainer, really was the principal in the transactions. He founded his opinion (as to the bakery) on the improbability that Fraser would make over his business to his foreman on the terms alleged; on the fact that at the time Fraser was alarmed at the result of an action which had been brought against him, and had given this at the time as a reason for the transference; on the fact that after the transfer Fraser continued to act in the business as before; and lastly, on the admissions of Wilson. As to the heritable property transaction, his Lordship held the evidence to be of the same nature. He found that Fraser had given the orders as to the erection of the buildings to the architect, and that the tradesmen had supplied the goods on his credit, and Wilson did not pretend that it was a real transaction. "I have no doubt whatever that it was unreal, and that the intention was that if the building speculation succeeded" Fraser "should be retrocessed, but if it failed, that the defender [Fraser] should deny liability to the builders, and then attach the property for his feu-duties." This judgment became final.

Fraser was sequestrated, and John Macqueen Barr, accountant, Glasgow, was appointed trustee on his estate.

In January 1881 Alexander Stronach junior, as trustee on the estate of Wilson, to which office also he had on 31st January 1885 been appointed in succession to Littlejohn, raised an action in the Sheriff Court at Aberdeen against Barr, as Fraser's trustee, for declarator that certain articles (which were of the value of less than £1000) were the exclusive property of the pursuer as Wilson's trustee, and for warrant to him to dispose of them as he might see fit. The articles in question were a number of articles which had been ordered in the name of Wilson for the building speculation above mentioned, and consisted of ironmongery, shop fittings, and timber. These had been stored by Wilson's trustee, but were claimed by the defender as Fraser's trustee. The pursuer stated that the tradesmen who supplied these articles were claiming in respect of them on Wilson's estate. The defender referred to the suspension before Lord M'Laren, in which the present pursuer had pleaded that Wilson was merely an agent and Fraser the true principal in the transactions relating to the articles in question. He stated that the articles in question had been really ordered on behalf of Fraser, and founded on the decision of Lord M'Laren in that process holding it proved that they had been supplied on Fraser's order and credit, and that he was the true debtor therefor. In respect of that decree he pleaded *res judicata*.

The Sheriff-Substitute (Brown) sustained that plea and assoilzied the defender.

"*Note.*—On the merits of the case the first point that calls for remark is that the position of the pleadings would not seem without proof to justify a final judgment, but the argument before me proceeded on the assumption on both sides that matters were ripe for the disposal of all questions of law, and particularly on the admission—and I feel that it is a foundation on which which a judgment may be laid—that the subjects in dispute are the same as those claims in respect of which occasioned the litigation in the Court of Session on the result of which the defender's plea of *res judicata* is based. Starting with that fact, the main question at issue really involves a com-

petition between the two trustees as to which of them, and to what set of creditors, is to distribute the bankrupt estate, and I apprehend the fundamental point to be decided is, where the right of property lies. Now, leaving out of view for a moment the plea of *res judicata*, it appears to me that that is just the question which Lord M'Laren decided in the Court of Session. Mr Littlejohn, in the action that was there raised, as the assignee of certain creditors, primarily sued the bankrupt William Alexander Fraser for the price of the articles which are now in dispute. He did so on the ground that the transfer of his business by Fraser to Wilson was collusive, that the latter was a mere dummy, and at best an agent, that Fraser was the true owner, and that the goods for the price of which decree was sought, although supplied in the name of Wilson, were really furnished on the credit of Fraser. The latter of these considerations is probably the most important, and it is distinctly emphasised in article 3 of the condescendence annexed to the Court of Session summons, where it is stated that 'the creditors who supplied knew that Fraser was either sole owner or the larger owner of the business, and it was mainly on his credit that they supplied them.' A long proof was led in that action, the relations of parties being fully gone into, and the Lord Ordinary decided the case precisely on the grounds in fact and law which the pursuer maintained. No doubt Mr Littlejohn also directed the action against himself as trustee on Wilson's estate, and no person had an interest to open up the decree in absence thus obtained, but liability was ultimately distinctly placed on Fraser on the ground that he was the true debtor in the several obligations. It may be that the creditors of Wilson, as a party to the collusive transfer, and as the purchaser nominally of the goods, may also have a claim to be ranked on his estate, but I think it is clear that in determining who the primary obligant was the Lord Ordinary decided where the right of property lay, and that that being in Fraser it passes to his trustee. The judgment of the Court of Session is all the more emphatic that it was pronounced in the face of a plea that the creditors had already selected Wilson as their debtor, and it may be added that the Lord Ordinary gives no countenance to the idea of anything like a partnership between Fraser and Wilson.

"It is said, however, that the pursuer has never been in Court as Wilson's trustee, and therefore that the parties not being the same one of the fundamental requisites of the plea of *res judicata* is wanting. In point of fact Wilson's trustee was in the action raised by himself, although in the somewhat anomalous position of defender, but in the case of *Gray* v. *M'Hardy and Others*, June 4, 1862, 24 D. 1043 [it was held], that representation of identical interests validated the plea of *res judicata*, and I do not doubt that in the action in the Court of Session, which determined the question of property, the pursuer suing *qua* assignee of Wilson's creditors, all interests which are in the field now were fully represented. The Lord Ordinary does not enter into any question as to the relative obligations of the respective creditors, nor, I apprehend, is that question strictly *hujus loci*, but having distinctly found that Fraser was liable as a principal on Wilson's undertakings, the interest of the defender as Fraser's trustee in the articles in question is thereby established, and therefore I do not see how the prayer of the petition that the pursuer has the sole right to them can be otherwise than refused.

"If I am right in holding that there has already been one trial of the question at issue among all the parties interested, it seems to me that a judgment in favour of Wilson's trustee on the ground of reputed ownership would directly contradict the judgment against Fraser as the true owner, and all the substantial averments made by the pursuer in the action in the Court of Session, and that in any event such a result could not in law follow. Since the case of *Duncanson*, however (March 4, 1881, 8 R. 563), and other recent cases, it has generally been understood that the operation of the principle of reputed ownership has been much circumscribed, but apart from that I do not see how Wilson's creditors can take their stand on this doctrine, for they are not in a position, and do not pretend to be able to allege that he was ever recognised as uncontrolled in his right to dispose of, or even in the possession of the subjects. I only think it necessary to add that in the actions which pended in this Court there is nothing to touch this question, the claim there having been made on different articles and through entirely different *medio concludendi*."

On appeal the Sheriff (GUTHRIE SMITH) recalled that interlocutor, and found that Wilson's trustee was entitled to retain possession of the goods, and to realise and distribute the same as part of his sequestrated estate.

"*Note.*—[*After stating the facts already detailed*]—In his evidence in the Court of Session action Wilson deponed—'The headings of the accounts were changed to my name . . . I paid the accounts to the millers; I continued to act as practical baker just as before . . . The bank account was altered to my name. Fraser drew the money from the bank. I signed the cheques under his direction. I also paid cheques myself when people had to call.'

"He was thus simply an agent trading *suo nomine*, and as such personally liable for the goods ordered in his name, but Fraser as the undisclosed principal was also liable, and when an action was raised in the Court of Session by the different persons who furnished the goods, to have it declared that their liability was joint and several, this was the conclusion which, after a proof and a patient investigation of all the circumstances by Lord M'Laren, was ultimately reached.

"It is of course the duty of this Court to give effect to that judgment, which is conclusive of the question of the liability of both Wilson and Fraser to the creditors claiming on Wilson's estate. But the Lord Ordinary did not decide as the Sheriff-Substitute seems to have thought, that because the property was in reality Fraser's he was entitled to have the goods handed over to him in a question with Wilson.

"It is an appropriate close to this singular history that Fraser is also now bankrupt, and a competition has arisen between his trustee and Wilson's trustee as to which of them is entitled to have the distribution of the goods. If the judgment of the Sheriff-Substitute stands Wilson's estate will yield nothing, and the creditors who furnished the goods naturally object to their

going to Fraser's creditors, even although they are included in the number.

"The claim which is stated by Fraser's trustee ignores the fact that the relation of principal and agent always involves a contract of indemnity. An agent having the principal's goods in his possession is entitled to decline to part with them until he is relieved of all costs, charges, and liabilities which he may have incurred in connection therewith in the execution of his agency. Suppose, for instance, both parties were still solvent, and Fraser were here claiming the goods from his agent Wilson, the latter might justly say, 'These goods are not yet paid for; I mean to sell them to pay the tradesmen, and you cannot ask me to give them up except on condition of your either paying the tradesmen yourself or relieving me of all responsibility in connection with them.'

"If that be so, the rights of the respective trustees are precisely the same. Fraser's trustee may have the goods, but not without first paying for them. And as confessedly he has not the means of doing so, the law and justice of the case will be satisfied by Wilson's trustee being allowed to sell them and distribute the proceeds as far as they will go in payment of the different persons by whom they were furnished."

The defender appealed to the Court of Session.

At advising—

Lord Mure—This action has been brought by the pursuer, as trustee in succession to David Littlejohn, advocate in Aberdeen, on the sequestrated estate of John Ingram Wilson, baker in Aberdeen, to have it found that certain articles of ironmongery, &c., described in the statement appended to the petition, are the exclusive property of the pursuer as trustee on that estate, and that he is entitled to dispose of them as he may see fit. It is directed against John Macqueen Barr, accountant in Glasgow, trustee on the sequestrated estate of William Alexander Fraser, engineer in Glasgow, and it is defended on the ground that the articles in question were the property of Fraser, and now belong to the defender as trustee on his estate. And it is further contended that this is now *res judicata* in respect of a judgment pronounced in this Court in July 1885 in an action brought against Fraser by Littlejohn, the predecessor of the present pursuer. That a decision to that effect was pronounced by Lord M'Laren in 1885, and is now final, does not admit of dispute, but the parties are directly at issue as to whether that judgment can be held to constitute *res judicata*, or on any other ground to exclude the present claim. Upon this the Sheriff and Sheriff-Substitute have differed in opinion, and I am not surprised that they should have done so, for the pleadings are at first sight somewhat confused and contradictory. But after careful examination of those pleadings I have come to the conclusion that the view which the Sheriff-Substitute has taken of the matter is correct.

In order to constitute *res judicata* in the ordinary case three things are necessary, viz., that the judgment founded on should have been pronounced in a competent process; 2d, that the subject-matter in dispute in the two actions should be substantially the same; and 3d, that the question should have been distinctly raised and decided between substantially the same parties.

Upon the first of these points I do not understand that there is here any question. Neither do I see that there can be any serious dispute about the second; for it is, I think, clear upon the pleadings that the articles in question in this action are the same or part of the same things as those in respect of which the litigation occurred in this Court, the judgment in which is founded on by the defender. This is very distinctly pointed out by the Sheriff-Substitute in the note to his interlocutor, where he refers to the statement made by Littlejohn, the pursuer of the original action, in which it is alleged that "the creditors who supplied the goods knew that Fraser was either the sole owner or the larger owner of the business, and it was mainly on his credit that they supplied them." This is set out in the third article of the condescendence in that action, and the plea-in-law is distinct to the effect "that the defender William Alexander Fraser being the true principal in the transactions giving rise to the accounts sued for, the pursuer is entitled to decree against the said defender Fraser as concluded for."

This is the statement and plea in the summons on which decree in absence was pronounced, and the charge on which was brought under suspension by Fraser. In that suspension, which was resisted by the present pursuer, who had succeeded Littlejohn as trustee on Wilson's estate, a similar statement is made on the part of the pursuer, and the plea-in-law is equally distinct, for it bears that "the complainer, having been truly the principal or party substantially interested in the transactions which gave rise to the debts for which the said decree was granted, the said decree was just and reasonable, and ought not to be suspended."

It was upon those facts and with reference to those pleas that the proof was led before Lord M'Laren, upon considering which his Lordship came to the conclusion that the reasons of suspension should be repelled, and so substantially gave effect to the plea which I have just read, relied on by the present pursuer and successfully maintained by him. Lord M'Laren's opinion on the evidence is distinct to the effect that Fraser was the principal in the transactions, and so liable to pay the price of the articles which had been supplied on his account.

The only question, therefore, which remains is, whether there was an identity of interests between the parties in that action and the present pursuer and defender sufficient to entitle the defender to insist on his plea of *res judicata*. I am of opinion that there is. The original pursuer of the first action was not merely the assignee of certain creditors of Fraser who had assigned over their claims to him, but he was also trustee on the sequestrated estate of Wilson, being the same character as that in which the present pursuer comes forward to demand possession of the articles in dispute. The present pursuer, moreover, has not only succeeded Mr Littlejohn as trustee, but he was actually in that position when the suspension was refused, as he had been only sisted as respondent during the proceedings. The present defender, on the other hand, is now trustee for Fraser, and so in my opinion entitled to maintain the judg-

ment pronounced against Fraser in the suspension as a defence to the present action upon the authority of the case of *Gray* v. *M'Hardie*, 24 D. 1043, referredto at the discussion. I am therefore of opinion that this appeal should be sustained.

The Court recalled the Sheriff's interlocutor and assoilzied the defender.

Counsel for Pursuer—Gloag—Shaw. Agent—A. Newlands, S.S.C.

Counsel for Defender — Comrie Thomson — Kennedy. Agents—Macpherson & Mackay, W.S.

Friday, December 17.

FIRST DIVISION.

SHARP (BELL'S TRUSTEE) *v.* COATBRIDGE TIN-PLATE COMPANY (LIMITED).

Public Company—Lien of Company over Shares under Articles of Association, Effect of, against Trustee of Bankrupt Shareholder.

The articles of association of a public company provided that "the company shall always have a first and permanent lien on the shares of each member for all the debts, liabilities, and engagements to the company of such member, solely, or jointly with any other person." . . . They also provided that the trustee in bankruptcy of a shareholder should be entitled to be registered as the holder of the bankrupt shareholder's shares. The Court *refused* an application by the trustee on the sequestrated estate of a shareholder who had incurred debt to the company in excess of the value of his shares, to have his name substituted on the list of shareholders for that of the bankrupt, *holding* that the company had a lien over the shares under the articles of association, that the trustee was subject thereto as the bankrupt would have been, and that the only object of the application was to endeavour to defeat the lien.

This was an application by Robert Sharp, iron merchant, Coatbridge, under sec. 35 of the Companies Act 1862, by which he sought to have the register of the "Coatbridge Tin-Plate Works (Limited)" rectified by the registration of his name therein as the holder of 248 shares of the company.

The petition was presented in the following circumstances — The petitioner had, upon 6th June 1884, been appointed trustee on the sequestrated estate of Edward Mather Bell, who prior to his sequestration had been the manager of the Coatbridge Tin-Plate Works. Bell had upon various occasions purchased shares of the company, and at the date of his sequestration 248 shares stood in his name in the register of shareholders. These shares were, in all, of the nominal value of £12,400, but were really of much less value. The 20th article of the articles of association provided that "Any person becoming interested in a share in consequence of the death or bankruptcy of any shareholder, or by any lawful means other than by transfer, in accordance with these presents, may, upon producing such evidence as the board think sufficient, either be registered himself as the holder of the share, or elect to have some person nominated by him, and approved by the board, registered as such holder, and if he shall elect to have such nominee registered, he shall grant to his nominee a transfer of the share, and until such transfer be registered, he shall not be freed from any liability in respect of the share." The petitioner averred that he was now, as trustee, in right of the said 248 shares, and was entitled to be entered in the register of shareholders as holder thereof. He further averred that he had requested the secretary of the company to register his name as the holder of Bell's shares, but that he had declined to do so. He prayed the Court to order that the register of the company be rectified by the registration of him (petitioner) as holder of 248 shares.

Answers were lodged by the company, in which they averred that between January 1879 and January 1886 Bell had drawn and used on his own account various sums of money belonging to them, and further, that he had had various transactions in goods with them, which resulted in his being due and indebted to them at the time of his sequestration the sum of £7038, 2s. 9d. They alleged the market value of Bell's shares to be £4216, and they averred that his indebtedness to them had frequently been recognised and admitted by the petitioner, his trustee, and especially that in a claim made by them to rank on Bell's sequestrated estate for the debt of £7038, the petitioner, as trustee, had admitted their claim to the extent of £1038, but had rejected it *quoad ultra* in respect that the claimants (the respondents) held a security over a part of the estate of the bankrupt valued at the sum of £6000. The security referred to was the respondents' lien over the 248 shares held by and standing in the name of the bankrupt, and to which this petition referred.

They founded on article 11 of the articles of association of the respondents' company, which provided—"The company shall always have a first and permanent lien on the shares of each member for all the debts, liabilities, and engagements to the company of such member, solely or jointly, with any other person, and the company may refuse to register the transfer of any shares by any member who may then be indebted, or under any liability to the company, whether solely, or jointly with any other person on any account whatever, and the company may at any time call upon such of the shareholders who may be indebted to the company to pay such debts and engagements, and interest and expenses thereof within one month from the date of the notice thereof, and should they fail to pay the same at the time and place fixed upon in the said notice, the company may at any time thereafter absolutely sell and dispose of the shares of any member who may refuse or neglect to pay such debts, liabilities, and engagements, and whether such member be the sole or joint holder of such shares, and apply the proceeds of such sale, so far as the same will extend, in discharge or satisfaction of all debts, liabilities, or engagements from such member of the company, and upon such sale the company shall without any further or other consent from the holder