raise a rebuttable presumption that the legal meaning was intended, rather than the irrebuttable presumption employed by the classical rule, or the apparent lack of any presumption under the liberal rule. *Cf.* 94 A. L. R. 226 (1935). The burden of introducing evidence and of proving by a preponderance of such evidence that the words were meant in other than the normal sense should be on the party denying the normal meaning. Such a presumption would do much to eliminate the possibility of successful fraudulent claims, which the liberal rule with no presumption would allow. Although application of a rebuttable presumption in the principal case would not have changed the result, since the surrounding circumstances showed conclusively that the recipient of the insurance money was the only person considered by the contracting parties, the court's adoption of the extreme liberal view seems unnecessary.

Corporate Reorganization—Constitutional Rights of Dissenting Classes under § 77B(b)(5)—[Federal].—In a reorganization proceeding under § 77B of the Bankruptcy Act, the debtor proposed various plans which were rejected by the bondholders as a class. The final plan, vague in terms, proposed to scale the bondholders' claims down twenty per cent, giving in exchange new bonds secured by a mortgage on the property formerly encumbered, or in the alternative, to appraise the value of dissenting bondholders' interests and pay them in cash. The debtor, anticipating refusal of the bondholders to accept the plan, relied on § 77B (b)(5) which provides for the adoption of a plan that has not received the required assents of creditors. From a final order dismissing the plan and proceedings, the debtor appealed. *Held*, decree affirmed; § 77B (b) (5) is unconstitutional. *In re Tennessee Publishing Co.*, 81 F. (2d) 463 (C.C.A. 6th 1936).

Section 77B (b) provides that a plan of reorganization ". . . . (5) shall provide in respect of each class of creditors of which less than two-thirds in amount shall accept such plan . . . . adequate protection for the realization by them of the value of their interests claims, or liens . . . . either as provided in the plan (a) by the transfer or sale of such property subject to such interests . . . . or (b) by a sale free of such interests, claims or liens at not less than a fair upset price and the transfer of such nterests, claims or liens to the proceeds of such sale; or (c) by appraisal and payment . . . . in cash of the value . . . . of such interests, claims or liens . . . . or (d) by such method as will in the opinion of the judge, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection. . . . . " 48 Stat. 914 (1934), 11 U. S. C. A. § 207 (b) (supp. 1935).

This section, in terms, seems to apply to all reorganizations, whether the group actively reorganizing represents senior creditors, junior creditors, or stockholders. In cases where senior creditors employ the section to force a plan on junior classes, clauses (a) and (b) are probably constitutional as they provide for the junior classes all to which they were originally entitled. However, clause (c) is probably unconstitutional if used to cut out a junior class which has a likelihood of realizing upon its claims in the event of foreclosure of the senior lien. *Louisville Land Bank v. Radford* (295 U.S. 555 (1935)) strongly suggests that the payment of the appraised value of a security interest is not an adequate substitute for the creditor's ordinary remedies, although the Frazier-Lemke Act, held unconstitutional in that case, was more drastic than section 77B (b) (5) (c) in giving the debtor six years in which to pay most of the appraised val-

ue. But the *Radford* case is not authority where the technical right of the junior class to foreclose is worthless because a forced sale would leave nothing for it, even though there may be value behind the junior claims on a going concern basis. The application of clause (c) here would seem not to violate the due process clause because cash is given in exchange for the valueless technical right to foreclose.

It was probably intended that the application of § 77B (b) (5) be restricted to reorganizations by senior creditors. However, junior classes of creditors and stockholders have, as in the instant case, attempted unsuccessfully to employ the section to force a plan upon non-assenting senior classes. *In re Murel Holding Co.*, 75 F. (2d) 941 (C.C.A. 2d 1935); *In re Preble Corp.*, 12 F. Supp. 1002 (Me. 1935); *Francisco Bldg. Corp., Ltd. v. Battson*, C.C.H. Bankr. Serv., par. 3925 (C.C.A. 9th, Mar. 17, 1936). Here again the constitutionality of clauses (a) and (b) is probably beyond question. But the junior classes would seem to be taking an inconsistent position by invoking clause (c). An appraisal of the value of the senior classes' interest at less than 100 per cent amounts to an admission that the value of the property reorganized is not sufficient to cover those primary claims. Thus it leaves the junior classes with no interest or equity to reorganize. *In re Continental Cigar Co.*, C.C.H. Bankr. Serv., par. 3652 (D.C. Pa., Oct. 30, 1935); *In re William Penn Garage*, C.C.H. Bankr. Serv., par. 3649 (D.C. Pa., Oct. 7, 1935); *In re Consolidation Coal Co.*, 11 F. Supp. 594 (D.C. Md. 1935). And if the junior classes claim an equity or interest over and above senior claims, a fair plan "to adequately protect" the senior claims should allow them full payment in cash. *In re Murel Holding Co.*, 75 F. (2d) 941 (C.C.A. 2d 1935); *In re Preble Corp.*, 12 F. Supp. 1002 (Me. 1935); *Francisco Bldg. Corp., Ltd. v. Battson*, C.C.H. Bankr. Serv., par. 3925 (C.C.A. 9th, Mar. 17, 1936). The probable expense of doing so would prohibit such reorganizations. And if a plan were considered fair which provided for appraisal and payment of less than the full amount of the senior claims, clause (c) of subsection (b) (5), as so applied, would clearly be unconstitutional. *Cf. Louisville Land Bank v. Radford*, 295 U.S. 555 (1935).

Since clauses (a), (b), and (c) provide methods for cutting out dissenting classes entirely and paying them off, or allowing them to maintain their position, a plan such as that proposed in the present case which seeks to force a class to come into the plan and accept new securities even though more than one-third of the class have rejected the plan, must fall if anywhere within clause (d). If any scaling down of the senior claims is provided by a plan presented by junior groups under clause (d), then that clause would, *a fortiori*, be unconstitutional as being more drastic in effect than payment in cash under clause (c). See *In re Murel Holding Co.*, 75 F. (2d) 941 (C.C.A. 2d 1935); *Francisco Bldg. Corp., Ltd. v. Battson*, C.C.H. Bankr. Serv., par. 3925 (C.C.A. 9th, Mar. 17, 1936). And even if no scaling is attempted, clause (d) would, perhaps, be unconstitutional in the light of that part of the *Radford* opinion which criticized the delay of the right to foreclose in the absence of emergencies. *Louisville Land Bank v. Radford*, 295 U.S. 555, 598 (1935). Section 77B is permanent rather than emergency legislation. See 15 B. U. L. Rev. 818 (1935).

Corporate Reorganization—Suit against a Solvent Surety when the Principal Is Being Reorganized under § 77B—[Federal].—The dissenting bondholders of a corporation in reorganization under § 77B of the Bankruptcy Act (48 Stat. 912 (1934), 11