215 Mich. 148, 183 N.W. 749 (1921). See Rest., Contracts § 357 (1) (b), (3). The requirement of an "acceptance," while easily satisfied when the defendant has received chattels, has been practically prohibitive of relief in land cases: strong notions of landowner protection have led the courts to consider the mere taking of possession as insufficient evidence of an "acceptance" of the work done. *Manitowoc Boiler Works v. Manitowoc Glue Co.*, 120 Wis. 1, 97 N.W. 515 (1903); *Falk v. Nitz*, 219 Mich. 650, 189 N.W. 921 (1922). Since so much acquiescence by the defendant is necessary to find an "acceptance" in building cases, this relief should more appropriately be termed recovery on an implied-in-fact contract. *Munro v. Butt*, 8 El. & Bl. 738 (1858). And in most jurisdictions this is the full extent of relief today.

Clearly such protection is still inadequate for those contractors who in good faith thought they had fully completed their contract but, because of their ignorance or incompetence, had not rendered substantial performance. The task of ascertaining the actual benefit received by the defendant and of balancing with it the plaintiff's state of mind in carrying on his work seems to present an obvious situation for equitable relief unhampered by broad reactions to breaches of contract. Thus, a few courts have given true quasi-contractual relief if there was a breach in good faith. *Peterson v. Sutter*, 4 La. App. 180 (1926); *Jackson Lumber & Supply Co. v. Deaton*, 209 Ky. 239, 272 S.W. 717 (1925); see Rest., Contracts § 357 (1) (a). Other courts, following the analogy of *Britton v. Turner* (6 N.H. 481 (1834)), have protected a contractor who wilfully abandoned his contract. *Davis v. Barrington*, 30 N.H. 517 (1855); *Aetna Iron & Steel v. Kossuth Cty.*, 79 Iowa 40, 44 N.W. 215 (1890). This latter rule has frequently been criticized as making a breach of contract profitable, resulting in a greater disregard of the binding effect of contractual obligations. 6 N.Y.U.L. Rev. 211 (1928). The good faith rule is not subject to this objection, however, and presents a more compelling case for quasi-contractual relief, since a benefit has been conferred on the defendant with his consent and in good faith. Woodward, Quasi-Contracts §§ 7, 8 (1913); 1 Williston, Contracts § 3 (2d ed. 1936). It is evident that courts which require an "acceptance" before giving quasi-contractual relief are not speaking in terms of an "equitable" remedy. See 24 Col. L. Rev. 885 (1924). If in the pursuance of the latter type of relief the courts would substitute for talk of acceptance or waiver inquiries as to the causes of the plaintiff's breach and as to the amount of benefit to the defendant, breaches of contracts would not be encouraged nor would the other party be unjustly enriched.

In the instant case, the court made no attempt to inquire into the presence or absence of the plaintiff's good faith in failing to fix the roof to comply with the contract after he had been notified of its defective condition. If there was an unconscionable refusal to repair, no relief was merited. But if he *bona fide* thought that the roof was properly constructed and defects were not certain until found by a jury, the court's failure to find an "acceptance" in a building case can hardly be said to constitute a fair disposal of the plaintiff's claim.

Corporate Reorganization—Limitation of Rent Claims under § 77B(b)—[Federal]. —Upon rejection of his lease in § 77B proceedings the debtor's lessor filed a claim for the difference between the rent reserved and the present value of the term. The trial court allowed the claim but limited its participation in the plan, even as against the stockholders of the debtor, to an amount equal to three years' rent, approximately halving the claim. Under § 77B (b), "The claim of a landlord . . . . shall be treated as a claim ranking on a parity with debts . . . . but shall be limited to an amount not to exceed the rent . . . . for the next three years . . . . plus unpaid rent accrued. . . ." On appeal, *held*, affirmed. *Kuehner v. Irving Trust Co.*, 57 Sup. Ct. 298 (1937).

Constitutional attack on the rent clause of § 77B (b) might have been made on three grounds: (1) as an unreasonable classification, since it limits a landlord's recovery below that of other creditors similarly injured; (2) as an unreasonable classification, since it provides for equal recovery to landlords unequally injured and unequal recovery to those equally injured; (3) as a denial of due process, since it denies full satisfaction of the landlord's claim while preserving an interest in the debtor's stockholders. The bankruptcy power necessarily permits some classification of creditors and limitation of their rights; only when a rule is arbitrary and unreasonable will it be held unconstitutional. *Campbell v. Alleghany Corp.*, 75 F. (2d) 947 (C.C.A. 4th 1935). The major objection to putting landlords on equal footing with other creditors is that the damage sustained by the former is highly speculative. The proper measure to be applied is the difference between the fair rental value of the premises for the term remaining and the discounted value of the rent reserved. *Leo v. Pearce Stores Co.*, 57 F. (2d) 340 (D.C. Mich. 1932). But since the landlord is not required to find a new tenant immediately, the amount fixed by the master as the rental value is based to a great degree on a guess. Whatever probability of accuracy exists decreases rapidly when the value is being estimated during a depression period or when the lease under consideration is a long one, and it is only under comparatively long term leases broken at a time when rental values are abnormally low that the appraised injury to the lessor will be likely to exceed the three years' rent allowed him. Even the original leasing parties have shown increasing unwillingness to guess at the value of long term leases by their tendency, during the current depression, to desert the traditional fixed rental on commercial property in favor of the less uncertain "percentage" and "commodity index" rents. The risk of extravagant estimates of injuries to lessors, resulting in greatly increased losses to other creditors, will justify a reasonable rule-of-thumb limitation. The fact that the three years' rent rule has met with general approval is good evidence of the rule's reasonableness, even though the approval may be partly an expression of relief at the overthrow of the old bankruptcy rule that most landlord's claims were not provable against the estate at all. *Manhattan Properties, Inc., v. Irving Trust Co.*, 291 U.S. 320 (1934); see 2 Univ. Chi. L. Rev. 629 (1935). The same argument serves to destroy the lessor's claim that he is not given equal protection with other landlords. The appraisals accepted by the master are so highly speculative that not even the lessor would claim they are accurate. Hence the mere fact that the rule of thumb will almost certainly result in inaccurate classifications of landlords does not necessarily render the rule unreasonable.

It is harder to see how the Court could avoid the due process argument against limiting the landlord's claim in favor of the stockholders of the debtor. This construction of § 77B (b) is similar to the class legislation of the Frazier-Lemke Act, held unconstitutional in *Louisville Joint Stock Land Bank v. Radford* (295 U.S. 555 (1935)). There the interest of the debtor in his property was increased to the prejudice of holders of mortgage securities by drastic limitation on the power to foreclose. Here the "security" bargained for was a right to resume possession of the lessor-creditor's land plus a right in the general assets, prior to the debtor, for the injury not recompensed by the recovery of the land. If the Frazier-Lemke Act had not attacked the creditor's security but had arbitrarily limited the amount of his deficiency judgment while reserving part of the assets to the debtor, the situation would have been parallel to that in the principal case. Such a deficiency judgment act would differ from the Frazier-Lemke Act only in attacking contract rights instead of property rights. While the exercise of the bankruptcy power may properly impair contract rights, it is difficult to understand that it may do so directly to enrich the debtor. If the instant case is not to be taken as holding that contract rights may be abridged for the benefit of the debtor where property rights may not, then it must be distinguished from the *Radford* case on other grounds. It may be that stockholder participation in a § 77B plan is necessary to induce them not to avail themselves of their nuisance position, *i.e.*, stockholders can claim an interest in the corporation until it is proved insolvent and may insist upon this long and difficult proof. But this seems a rather weak reason for "abridging a contract right." Nor is mere speculativeness of damages a sufficient reason, because the assessment might as well be too low as too high, and a rule of thumb can hardly be considered more nearly accurate than the expert estimate of appraisers, inexact though it may be. The secret may lie in the fact that the leases are *long* and deal with *land*. Perhaps it is considered that a landlord does not expect to retain the benefits of his lease notwithstanding economic vicissitudes; perhaps that it is exactly the landlord who should bear the economic burden; perhaps, finally, that an attempt to freeze items of business cost over long periods is more or less consciously disfavored.

Corporations—Majority Control—Ratification of Directors' Fraud—[Delaware]. —The defendants, as officers and directors of a management corporation and its subsidiary, had themselves twice compensated for the same services to the subsidiary. The complainants, stockholders in the subsidiary, filed a bill for an accounting, seeking return to the corporation of the excess compensation which the defendants had taken. Three years after the bill was filed, a majority of stockholders in the subsidiary voted to ratify the defendants' conduct. *Held*, the defendants' conduct was fraudulent, and hence a majority of stockholders cannot gratuitously ratify it over a minority dissent. *Eshleman v. Keenan*, 187 Atl. 25 (Del. Ch. 1936).

With few exceptions the courts have been content with the bromide, "a majority cannot ratify a fraud." *Bagshaw v. Eastern Union Ry. Co.*, 7 Hare 114, 129 (1849); *Brewer v. Boston Theatre*, 104 Mass. 378, 396 (1870); *Ford v. Ford Roofing Products Co.*, 285 S.W. 538, 541 (Mo. App. 1926). The rule apparently means that where a director or officer has injured the corporation by conduct denominated fraudulent, a vote of approval by the majority of shareholders, however well-informed and bona fide they may be, will not divest the minority holder of his derivative cause of action. Thus interpreted, this rule rejects the principle of corporate management by the majority in a case whose sole distinguishing feature is fraud in the activity with respect to which the majority is exercising its discretion. It may be that the courts have been searching for a rule which, however drastic, might effectively check dishonesty on the part of corporate officials. This consideration, however, is insufficient to justify so extraordinary an encroachment upon the power of the majority as is embodied in the literal statement of the rule. It must, therefore, be differently interpreted. In the cases re-