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 relying on the rule it has generally been unnecessary to the decision but proper-sounding, familiar, and convenient to apply. These cases fall into three groups: (1) Suits by minority stockholders where no ratification has been attempted, defended on the ground that a majority might later ratify. *Bagshaw v. Eastern Union Ry Co.*, 7 Hare 114 (1849); *Continental Securities Co. v. Belmont*, 206 N.Y. 7, 99 N.E. 138 (1912); *Endicott v. Marvel*, 81 N.J.Eq. 378, 87 Atl. 230 (1913). (2) Cases of attempted ratification in which the majority probably did not understand the full import of what they were ratifying. *Berendt v. Bethlehem Steel Corp.*, 108 N.J.Eq. 148, 154 Atl. 321 (1931); see *Hyams v. Calumet & Hecla Mining Co.*, 221 Fed. 529 (C.C.A. 6th 1915). (3) Cases of attempted ratification in which the majority, themselves, were guilty of "fraud" or bad faith of some sort. *Collins v. Hite*, 109 W.Va. 79, 153 S.E. 240 (1930); *Godley v. Crandall & Godley Co.*, 212 N.Y. 121, 105 N.E. 818 (1914).

The confused language of the courts, especially in the cases of the third group, indicates that the maxim arose out of a failure to distinguish between the fraud in the ratification and the fraud to be ratified. See *Hazard v. Durant*, 11 R.I. 195, 207 (1875); *Collins v. Hite*, 109 W.Va. 79, 82, 83, 153 S.E. 240, 241 (1930). In such cases the confusion did no harm. But the distinction must be made and the rule carefully evaluated where it is shown that there was no fraud on the part of the majority stockholders. In *Kessler & Co. v. Ensley* (129 Fed. 397 (C.C.Ala. 1904)), it was held that a bona fide majority did have the power to ratify a fraud. The court insisted that action by the majority stockholders should not be interfered with except where the majoritity stockholders, themselves, have done something objectionable. A ratification should be held ineffective if the majority are motivated by interests other than the best interests of the corporation or if an uninformed or misinformed majority has been used by others so motivated. See *Gamble v. Queens County Water Co.*, 123 N.Y. 91, 99, 25 N.E. 201, 202 (1890); *Kessler & Co. v. Ensley*, 129 Fed. 397, 401 (C.C.Ala. 1904).

The character of the original conduct sought to be ratified is relevant, however, as a basis for inferring the motives of the majority or those who control the majority. Where the conduct of the directors was dishonest there is some probability that the ratification of the majority was part of the same scheme. The inference becomes much stronger where a large part of the stock is owned or controlled by the interested parties. Another strong inference as to the majority's motives may arise from an inquiry into the benefit accruing to the corporation from the ratification. Refusal to ratify may sometimes necessitate rescission and return of benefits received, precipitate a suit against the corporation for damages on a *quantum meruit*, or abrogate a compromise not considered unfair by the majority. See *Karasik v. Pacific Eastern Corp.*, 180 Atl. 604, 605 (Del. Ch. 1935). It is clear that litigation may be considered unwise where the amount is small, success uncertain, or notoriety undesirable. It may frequently be worth while to give up the cause of action in order to avoid antagonizing the corporate officials. But ratification which involves giving up a valuable corporate cause of action without any comparable benefit is strong evidence of improper motives or of ignorance of the conduct ratified. See *Flynn v. Brooklyn City R. Co.*, 158 N.Y. 493, 53 N.E. 520 (1899).

Equity—Injunction Enjoining Prosecution of Injunction in Court of Concurrent Jurisdiction—[Federal].—A federal district court in Georgia refused the plaintiffs' prayer for an interlocutory injunction. The following day the plaintiffs filed a 146-