lying 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-

page printed petition in a Tennessee federal district court, alleging the same cause of action as in the Georgia case; and over the defendant's objection that the matter had been adjudicated in the Georgia court, the Tennessee court granted a preliminary injunction. The defendant thereupon moved for a preliminary injunction in the Georgia court to restrain the plaintiffs from taking, authorizing, or permitting any action to enforce the Tennessee injunction. *Held*, injunction granted. *Georgia Power Co. v. Tennessee Valley Authority*, not yet reported (D.C. Ga. Dec. 23, 1936).

Several possible methods of preventing a defeated party from avoiding the decision of one federal court by taking his case to another of concurrent jurisdiction may be suggested. Under ordinary circumstances the doctrine of *res judicata* is effective to protect the party winning in the first court; but its efficacy depends upon recognition by the second court. In the situation presented by the principal case, the Tennessee court's refusal to treat the first decision as *res judicata* could be counteracted only by an appeal; yet the very object of the plaintiff in bringing the Tennessee suit and of the defendant in bringing the second Georgia suit was to avoid the delay incident to appeal.

Perhaps the full faith and credit clause might be relied upon in the second court by the party winning in the first court. U.S. Const. art. 4, § 2, cl. 1. But this clause is applicable only to controversies between states, and although methods of extending its application to the federal courts and of giving direct effect in foreign jurisdictions to equitable decrees have been advocated (see 52 A.B.A. Rep. 292, 299 (1927)), it could be enforced only by appeal.

The need for a more rapid means of preventing reversal by the second court might be met by an injunction. The use of an injunction to prevent the defeated party from pursuing his remedy in another court has been justified on two grounds: (1) a court, having once acquired jurisdiction, feels bound (or at least privileged) to protect its jurisdiction from collateral attack (*Looney v. Eastern Texas R.R. Co.*, 247 U.S. 214, 221 (1918)); (2) a court may wish to protect the winning party against vexatious actions. *Oates v. Morningside College*, 217 Iowa 1059, 252 N.W. 783 (1934); Foster, Place of the Trial in Civil Actions, 43 Harv. L. Rev. 1217, 1245 (1930). Thus it has been held proper to grant an injunction even though there is every assurance that *res judicata* might be successfully pleaded in the second court. *Booth v. Leycester*, 1 Keen 579 (1837); 91 A.L.R. 570 (1934). Such injunctions are sometimes recognized by the second court as a matter of comity; sometimes not. *Fisher v. Pacific Mut. Life Ins. Co.*, 112 Miss. 30, 72 So. 846 (1916); *cf. State ex rel. Bossung v. District Court of Hennepin County*, 140 Minn. 494, 168 N.W. 589 (1918); 39 Yale L. J. 719 (1930). However, the use of an injunction by the first court is especially likely to be an inadequate protection to the winning party if the suit being enjoined is itself an injunction suit. For if after one court has denied injunctive relief a second court grants it, and the first court then enjoins its enforcement, the plaintiff has either succeeded in obtaining a reversal of the first decision or has caused an impasse which is a partial victory for himself. If the defendant obeys the second court's injunction, the plaintiff has his advantage pending appeal. But if the defendant violates the injunction of the second court and is cited there for contempt, he can likewise have the plaintiff cited for having permitted the enforcement of his injunction; and the result will be inactivity on both sides. Perceiving the confusion and "utter absurdity" that must accompany such proceedings, some courts have been led to refuse an injunction against the prosecution of an action

in another jurisdiction. *Platto v. Deuster*, 22 Wis. 460 (1868); *Endter v. Lennon*, 46 Wis. 299, 50 N.W. 194 (1879).

Probably the best solution of the difficulty of obtaining immediate relief from repeated injunction suits in other courts would be through an extension of the writ of prohibition. This writ is normally used by a higher court to prevent a lower court from hearing a case only when the lower court lacks jurisdiction in the strict sense, *i.e.*, the power to make a decree which will be binding upon the parties. See 1 Univ. Chi. L. Rev. 146 (1933); Cook, The Powers of Courts of Equity, 15 Col. L. Rev. 106 (1915). The writ has, however, been used successfully to stop proceedings in a lower court having jurisdiction over the parties where an injunction had been issued by a foreign court of concurrent jurisdiction. *State ex rel. New York, C. & St. L. Ry. Co. v. Nortoni*, 331 Mo. 764, 55 S.W. (2d) 272 (1932); 1 Univ. Chi. L. Rev. 146 (1933); 46 Harv. L. Rev. 1030 (1933). Although a wide use of writs of prohibition would be both undesirable and unnecessary, it is but a slight extension to make them available as an immediate remedy where judicial differences have become acute.

The dispute which culminated in the instant decision has been the subject of much comment. The President in his message proposing that "direct and immediate appeal to the Supreme Court" from district court rulings on the constitutionality of federal statutes be provided, and that lower courts be prevented from enjoining their enforcement without permitting the Attorney General to intervene, pointed to cases like the principal case as an illustration of the need for effective means of curbing differences between courts. 81 Cong. Rec. 1084 (Feb. 5, 1937). This proposal would undoubtedly tend to prevent a duplication of the instant situation in cases involving federal statutes; but a substantial part of the business of the federal courts involves cases in which constitutional questions are not raised. American Law Institute, Study of the Business of the Federal Courts, pt. 2, p. 113 (1934). The possibility of cross-injunctions of the present type would therefore remain even though the President's recommendations were adopted. If the writ of prohibition were made issuable *ipso facto* by either a circuit court of appeals or the Supreme Court upon a showing of a prior federal adjudication, competition for advantage pending appeal would be eliminated.

Evidence—Burden of Proof on Sub-issue Raised by Improper Pleading—[Iowa].—The plaintiff brought an action for personal injuries alleged to have been caused by the defendant's striking her with his car. The defendant both entered a general denial and specially pleaded that the car which struck the plaintiff was not the one which he was driving. At the trial two witnesses testified that the defendant's car struck the plaintiff. The defendant and his wife testified to the contrary; but the defendant introduced no evidence that another car hit the plaintiff. The trial court instructed the jury that the burden was on the plaintiff to prove that the defendant's car struck her. *Held*, the instruction was erroneous. The defendant asserted the affirmative of the issue and therefore had the burden of proof. Since he introduced no evidence, it was a non-disputed issue and should not have gone to the jury. *Griffin v. Stewart*, 270 N.W. 442 (Iowa 1936).

Contrary to the result reached in this case, it seems that the burden of persuasion should be assigned on a more substantial ground than the accidents of pleading in a particular case. See 5 Wigmore, Evidence § 2485 (2d ed. 1923). If the court were cor-