North Dakota Law Review

Volume 32 | Number 2 Article 4

1956

Corporations - Stockholder's Derivative Suit - Ratification of Fraud

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CORPORATIONS — STOCKHOLDER'S DERIVATIVE SUIT — RATIFICATION OF FRAUD. One of the most notable and controversial fields in the law of corporations is the stockholder's derivative suit. Before courts of equity made this remedy available, a stockholder whose interest was impaired by some act or inaction on the part of the corporate directors, had no remedy at law. Law courts refused to countenance the action, reasoning that as a corporation is a separate entity, any injury flowing from directors' conduct was an injury suffered by the corporation, which alone could maintain the suit. To alleviate this situation, equity courts reluctantly took cognizance of the aggrieved shareholder's position and allowed him to bring the action.[1]

Perhaps the first formal recognition of the remedy came in *Foss v. Harbottle*,[2] a famous English decision, which allowed the plaintiff to sue on behalf of and for the company in an action against certain of its directors. Once the way was opened for this type of action, the derivative suit rapidly gained widespread recognition in the courts. In 1855, the Supreme Court of the United States stated that the jurisdiction of equity in this class of suits was no longer doubted.[3] Today the derivative suit is a well established remedy and is especially prevalent in Delaware, New Jersey, New York and Pennsylvania.

Although the remedy may be invoked in other fact situations, it is typically used: (1) where some action or threatened action on the part of the board of directors or trustees of the corporation exceeds their authority; (2) where the directors, or a majority of them act in their own interest to the corporation's detriment; (3) where the majority of the shareholders acts oppressively or illegally; or, (4) where fraud by the directors will result in serious injury to the corporation.[4]

The possibilities for abuse, latent in the derivative suit, are proliferous. For example: The capricious plaintiff may be acting as a puppet for a rival corporation.[5] Armed with an inconsiderable interest the shareholder may unconscionably attempt to assert the

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1. "A shareholder's derivative suit is an invention of the courts of equity and is recognizable only in equity and cannot be maintained at law." Liken v. Shaffer, 64 F. Supp. 432, 441 (N.D. Ia. 1946); Felsenheld v. Block Bros. Tobacco Co., 117 W. Va. 167, 192 S.E. 545 (1937).
2. 2 Hare 461, 67 Eng. Rep. 189 (Ch. 1848).
3. Dodge v. Woolsey, 59 U.S. (18 How.) 331 (1856).
4. See Hawes v. Oakland, 104 U.S. 450 (1881).
5. Forrest v. Manchester S. & L. Ry. Co., 4 De G. F. & J. 125, 45 Eng. Rep. 1131 (Ch. 1861); See Gen. Inv. Co. v. Bethlehem Steel Corp., 88 N.J. Eq. 237, 102 Atl. 252 (1917).

full rights of the corporation.[6] A party might institute suits, not to redress actual wrongs, but to capitalize upon their nuisance value[7] by holding out for a private settlement[8] or purchase by the corporation of his shares at an inflated price.[9] Even the most dubious claims have a high nuisance value because they are time consuming, bring adverse publicity, and are costly to the corporation.[10] These possibilities of abuse have led to the imposition of stringent prerequisites to a plaintiff's right to maintain the action.

REQUIREMENTS FOR SUIT

The court in *Foss v. Harbottle* was exceedingly strict in laying down the conditions precedent to the commencement of a shareholder's suit. The court said that in order for the suit to be instituted it must be shown that the corporate authorities have been requested to act and, that a demand for action has been made to the majority of stockholders.

The theory underlying the demand upon the management is that the right to vindicate corporate injuries rests in the board of directors, and that they must be given an opportunity to enforce the corporation's rights before anyone else may assume to do so: The effort on the part of the shareholder to induce action by those in control of the corporation must be more than a perfunctory demand; it must be made in earnest[11] and, in addition, must allow the directors a reasonable time in which to act.[12] However, if cir-

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6. A few cases have indicated that a plaintiff will not be permitted to bring a stockholder's suit if his holdings are so small as to fall within the maxim *de minimus non curat lex*. Danmeyer v. Coleman, 11 Fed. 97, 101 (C.C.D. Cal. 1882) (dictum); Wagner Elec. Corp. v. Hydraulic Brake Co., 269 Mich. 560, 562, 257 N.W. 884, 886 (1934) (dictum). See note, 34 Colum. L. Rev. 1309 (1934).

7. Suits brought with little probability of success have been defined as strike litigation. "A 'strike suit' is an action brought by a security holder, not in good faith, but through the exploitation if its nuisance value, to force the payment of a sum disproportionate to the normal value of his interest as the price of discontinuance." Note 34 Colum. L. Rev. 1308 (1934).

8. Dresdner v. Goldman Sach Trading Corp., 240 App. Div. 242, 269 N.Y. Supp. 360, 368 (1934) (dictum); Pollitz v. Wabash R.R. Co., 167 App. Div. 669, 152 N.Y. Supp. 803, 814 (1915) (dictum).

9. Manufacturer's Mut. Fire Ins. Co. of R. I. v. Hopson, 176 Misc. 220, 25 N.Y.S.2d 502 1940), *Aff'd*, 262 App. Div. 731, 29 N.Y.S.2d 139 (1941), *Aff'd*, 288 N.Y. 668, 43 N.E.2d 71 (1942) (Stock purchased at 7 times its value). See also Stevens, Corporations §149 (2d. ed. 1949).

10. *E.g.*, Winkelman v. Gen. Motors, 48 F.Supp. 504 (S.D.N.Y. 1942). (Suit brought by minority shareholders took several months to try at a cost of $800,000 to Gen. Motors).

11. Bacon v. Irvine, 70 Cal. 221, 11 Pac. 646 (1886); Montgomery Light Co. v. Lahey, 121 Ala. 131, 25 So. 1006, 1007 (1898) (dictum).

12. Bartlett v. New York, N. H., & H. R.R., 221 Mass. 530, 109 N.E. 452, 455 (1915) (dictum). (Bill was filed 7 days after demand had been made. The court stated, ". . . such notice was entirely too short in time for any practical purpose.")

cumstances clearly indicate that a demand would be impractical or useless, it is generally held unnecessary.[13]

Among the situations that have been held to obviate the necessity for demand are those where the directors have been guilty of misconduct equivalent to a breach of trust,[14] where the wrongdoers are in control of the corporation,[15] where there has been collusion between the directors and the majority of shareholders,[16] or where the majority is in sympathy with the directors.[17] If the plaintiff feels that demand is unneccessary he must set forth in the averments of his bill facts sufficient to show the futility of the requirement.[18]

If the demand for redress made upon the directors is refused, the plaintiff must then request the other shareholders to take action.[19] The rationale of this requirement is that when the directors refuse to act, a majority of the stockholders should be allowed to take action in their stead. This demand is in the nature of an intracorporate appeal from an adverse decision by the management. Like the requirement of demand on the management, the appeal to the shareholders is not a rigid one; consequently, a good faith attempt or a showing of the futility of such a request will suffice. Courts in this country disagree as to the reasonableness of requiring an appeal to the shareholders, some authorities considering it unreasonable and impractical in view of the expense and delay involved.[21]

The court in *Hawes v. Oakland*[22] succinctly stated the prereqisites to the institution of a derivative suit:

"Before the shareholder can bring an action in his own name he should show to the satisfaction of the court that he has

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13. See, *e.g.*, Hawes v. Oakland, 104 U.S. 450 (1881); Caldwell v. Eubanks, 326 Mo. App. 185, 30 S.W.2d 976 (1930); Continental Securities Co. v. Belmont, 206 N.Y. 7, 99 N.E. 138 (1912); note, 15 Minn. L. Rev. 453 (1931) (Discussion of conditions precedent to stockholder's derivative suit).

14. Del. & Hudson Co. v. Albany & Susquehanna Ry., 213 U.S. 435 (1909).

15. See, *e.g.*, United Copper Securities Co. v. Amalgamated Copper Co., 244 U.S. 261 (1917); Montgomery Light Co. v. Lahey, 121 Ala. 131, 25 So. 1006 (1898); Pencile v. State Farmers' Mut. Hail Ins. Co., 74 Minn. 67, 76 N.W. 1026 (1898).

16. Montgomery Traction Co. v. Harmon, 140 Ala. 505, 37 So. 371 (1904).

17. Witter v. LeVeque, 244 Mich. 83, 221 N.W. 131 (1928).

18. Facts showing that he has complied with this condition must be set forth in unmistakable terms in the plaintiff's bill. *E.g.*, Bartlett v. New York, N. H. & H. R.R., 221 Mass. 530, 109 N.E. 452 (1915); Katz v. New Eng. Fuel Co., 135 Me. 467, 199 Atl. 274 (1938).

19. See note 13 *supra*.

20. Unless there is adequate reason to the contrary the plaintiff must make an honest attempt to convince the shareholders that the action ought to be instituted. See, *e.g.*, Hawes v. Oakland, 104 U.S. 450 (1881); Continental Securities Co. v. Belmont, 206 N.Y. 7, 99 N.E. 138 (1912); Rathbone v. Parkersburg Gas Co., 31 W.Va. 798, 8 S.E. 570 (1888).

21. Tobelman v. Mokan, 41 F.Supp. 334, 339 (1941) (dictum); Slutzker v. Rieber, 132 N.J.Eq. 406, 28 A.2d 525, 527 (Ch. 1942) (dictum). See also Ballantine, Corporations §146 (rev. ed. 1946); note, 6 U. Chi. L. Rev. 269 (1939).

22. 104 U.S. 450 (1881).

exhausted all the means within his reach to obtain, within the corporation itself, the redress of his grievances, or actions in conformity to his wishes."

The court went on to say that the stockholder must also allege that he was a shareholder at the time the transaction of which he complains occurred, or that his shares have since devolved on him by operation of law. This latter limitation on the plaintiff's right to bring the action has been incorporated in section 23 (b) of the Federal Rules of Civil Procedure[23] and in the laws of several states.[24]

Even in face of these restrictions, the use of the derivative suit has flourished, causing states where the action has been most prevalent to adopt additional requirements in at attempt to curb increasing abuses of the remedy.[25] The New York Legislature, for example, has authorized judicial tribunals to require that security for the defendants' expenses be posted by a plaintiff holding less than five per cent of the aggregate par value of the outstanding stock, unless the value of his shares exceeds fifty thousand dollars.[26] Similar statutes have been enacted by other states.[27]

RATIFICATION AND NONRATIFICATION

The doctrine of ratification is a limitation some courts have adopted to frustrate the result of the derivative suit. Stated briefly the doctrine provides that certain acts even though *ulra vires* or fraudulent, may be ratified by a "disinterested majority" of the shareholders.[28]

Multiple ramifications attend the simple proposition that ultra vires or fraudulent acts may be ratified by the stockholders and

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23. Fed. Rules Civ. Proc. 23(b), 28 U.S.C.A. (1948) (This rule first appeared as Equity rule 94 in 1882 and later, in 1912, became Equity rule 27).

24. Ky. Rev. Stat. §271.605 as amended 1946 L. c. 141; Mich. Gen. Corp. Law §10 as amended by Act 209, Pub. Acts 1947; Mo. R.S. Ann. §847 19(b) as amended in 1945. See note 27 *infra*.

25. See note 27 *infra*.

26. N.Y. Gen. Corp. Law §61-b. See Cohen v. Beneficial Securities Co., 337 U.S. 541 (1949) (Statute's constitutionality affirmed).

27. Cal. Gen. Corp. Law §834 (1954) (Defendant may request security from plaintiff upon proper motion to court); Md. Laws c. 989 (1945); N.J. Stat. Ann. (1946 Supp.) tit. 14 §3, added by N.J.L. 1945 c. 131; Pa. Stat. Ann. tit. 12 §1322 (1954) (5% ownership with no alternative based on dollar value and no provision for decreasing the amount of the bond); Wis. Stat. 180.13 (1949) (No action by holders of less than 5% of shares of any class unless based on conduct resulting or intended to result in personal advantage to one or more directors or one or more shareholders). See note, 59 Harv. L. Rev. 799 (1946) for application of this type statute to the small shareholder.

28. Kessler v. Ensley Co., 123 Fed. 546 (C.C.N.D. Ala. 1903): Mountain States Packing Co. v. Curtis, 86 Colo. 355, 281 Pac. 737 (1929) (Ratification of a fraudulent transaction by shareholders, after a full discussion and by a large majority was conclusive); Claman v. Robertson, 164 Ohio St. 61, 128 N.E.2d 429 (1955) (A disinterested majority of the shareholders of a corporation have the power to ratify directors' fraud provided there is no actual fraud in either inducing or effecting such ratification).

subsequently approved by a judicial body. The necessity of adopting a line of demarcation to guide directors and stockholders in their conduct, and the impossibility of defining that point are equally evident.

The rule of ratification was no sooner enunciated than exceptions were grafted to it which seriously confined its scope. Thus, it has been stated that the ratification will be set aside upon a showing by the plaintiff that any of the following facts exist: (1) The majority of stockholders was induced to ratify by fraud;[29] (2) the majority was under the control of other influences which swayed it from making a fair and impartial judgment;[30] (3) the ratification evinced such recklessness and negligence that it amounted to bad faith;[31] (4) the ratifying majority was not a distinterested majority;[32] or, (5) a great percentage of the votes of the majority ratifying was obtained through proxy without full disclosure.[33] It should be noted that the determination of the existence of any of these facts must always lie within the province of the court. Because these exceptions involve subjective judgments, a group attempting to ratify, even though acting honestly, can never be certain that a court will not view its action as encompassed by an exception. It may only anticipate the court's action; thus it acts in a doubtful area — a twilight zone — subject always to being reversed by a court at the instance of a dissenting minority shareholder's suit. The majority cannot be certain that litigation will not result from their conduct, and yet proponents of the rule of ratification claim that its chief virtue is the prevention of suits by minority groups.[34]

Other reasons advanced to support the ratification rule are that to adopt any other rule would in some instances result in more injury to the corporation than it would suffer if the transaction complained of was allowed to stand,[35] or that if ratification is not allow-

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29. Mountain States Packing Co. v. Curtis, 86 Colo. 355, 281 Pac. 737, 739 (1929) (dictum).

30. Kessler v. Ensley Co., 123 Fed. 546, 558 (C.C.N.D. Ala. 1903) (dictum).

31. Claman v. Robertson, 164 Ohio St. 61, 128 N.E.2d 429, 435 (1955) (dictum).

32. Godley v. Crandall & Godley Co., 712 N.Y. 121, 105 N.E. 818 (1941); Gamble v. Queens County Water Co., 123 N.Y. 91, 25 N.E. 201 (1890).

33. Hyams v. Hecla Min. Co., 221 Fed. 529 (6th Cir. 1915); Berendt v. Bethlehem Steel Corp; 108 N.J.Eq. 148, 154 Atl. 321 (Ch. 1931).

34. Advocates of the doctrine state that to adopt any other rule would encourage nuisance litigation. See Kessler v. Ensley, 123 Fed. 546 (C.C. N.D. Ala. 1903); Claman v. Robertson, 164 Ohio St. 61, 128 N.E.2d 432 (1955); Landstrom, *Ratification By Majority Stockholders—A Problem in Corporate Democracy*, 31 B.U.L. Rev. 165, 172 (1951).

35. *E.g.*, Claman v. Robertson, 164 Ohio St. 61, 128 N.E.2d 429 (1955) (Directors, who purchases the stock at $27.50 per share, argued that if the stock was now worth less than the price paid for it, the corporation would suffer a pecuniary loss by recission. This possibility of loss would seem unlikely, however, because the plaintiff contended that at the time of sale the stock had a market value of approximately $200 per share).

ed, control of the corporation is transferred from the majority of shareholders to a dissenting minority.[36] It is submitted that these reasons tend more to discredit the nonratification rule than to support the ratification doctine.

Whatever the merits of the ratification rule may be, most courts refuse to sanction it in relation to fraud, preferring instead to allow any stockholder to come into court, show that a fraud has been perpetrated, and have it set aside. The theory that fraud may not be ratified, even by a disinterested majority, is called the "nonratification rule."[37] Proponents of the rule contend that allowing ratification of fraud carries the fundamental concept that the majority should rule the affairs of the corporation to such an extreme that it should not be the controlling factor. Although reasons in support of the rule are seldom advanced by the courts, it is undoubtedly based on public policy. Often a court will bottom its decision on a breach of the fiduciary relationship existing between the directors and the minority group[38] or between majority and minority stockholders.[39] This idea was iterated by Judge Cardozo in *Meinhard v. Salmon*:[40]

> "Many forms of conduct permissable in a workday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A trustee is held to something sticter that the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. . .Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions."

When placed on this basis the courts term the breach fraudulent and incapable of ratification short of unanimous condonation.[41] Other courts reason that adoption of any other attitude would allow a majority to work any kind of "rascally scheme" or fraud

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36. "We do not believe that in such a case the power of effective decision shifts from a majority to a minority of the stockholders." Solomont & Sons Trust v. New England Theatres Operating Corp., 326 Mass. 99, 93 N.E.2d 241, 249 (1950).
37. Claman v. Robertson, 164 Ohio St. 61, 128 N.E.2d 429 (1955).
38. "A majority of the stockholders cannot ratify acts of corporate officers, so as to cut off the rights of minority stockholders, where such acts are a fraud or abuse of the trust confided to the officers." Hodgeman v. Atlantic Refining Co., 300 Fed. 590, 599 (D.C. Del. 1924); Ford v. Ford Roofing Co., 285 S.W. 538, 540 (Mo.App. 1926) (dictum).
39. "The majority has the right to control; but when it does so, it occupies a fiduciary relation toward the minority, as much so as the corporation itself or its officers and directors." Southern Pac. Ry. v. Bogert, 250 U.S. 483, 487 (1919); Mitchell Inv. Co. v. Republic Steel Co., 63 F.Supp. 323, 328 (N.D. Ohio 1944) (dictum).
40. 249 N.Y. 458, 164 N.E. 545 ,546 (1928).
41. Dana v. Morgan, 219 Fed. 313, 314 (S.D. N.Y. 1914), *aff'd.* 232 Fed. 85 (2d Cir. 1916) (dictum); Endicott v. Marvel, 81 N.J.Eq. 378, 87 Atl. 230, 233 (Ch. 1913) (dictum).

upon a minority.[42] One court stated simply that, ". . . it is impossible to ratify a fraud and make that good which is vicious from the foundation."[43] Very often a court will characterize the action complained of as something other than fraud and will strike it down on the theory that it was *ultra vires* or illegal.[44] In these cases the doctrine of nonratification of fraud is not involved.

Reasons advanced in favor of allowing a minority stockholder to bring a derivative suit may be applied with equal soundness to support the doctrine of nonratification. Certainly the rule has accomplished much in policing the corporate system and in protecting the corporate ownership from management. By educating corporate directors in the principle of fiduciary responsibility the rule has undobtedly prevented the diversion of large amounts of capital from stockholders to management and outsiders. The deterrent effect the rule has on directors toying with fraudulent schemes should not be underemphasized.

One of the chief arguments advanced in opposition to the nonratification rule is that its adoption renders every fraudulent act, however inconsequential, a potential source of litigation. There seems to be no reason to presume, however, that litigation is materially deterred by adherence to the ratification rule, in that ratification is apparently not a bar to plaintiff's suit where fraud has been alleged.[46] Nevertheless it is true that unqualified application of the nonratification rule would have the same effect of encouraging litigation. To meet this objection, statutes have been enacted to limit the parties' right to bring suit.[47] In addition, the court may determine that the action complained of was not fraudulent, but rather was the exercise of good "business judgment" that went awry. Further, if the defendant can show that the plaintiff partici-

42. See, *e.g.*, Dana v. Morgan, 219 Fed. 313 (S.D. N.Y. 1914), *aff'd*, 232 Fed. 85 (2d Cir. 1916); Keenan v. Eshleman, 23 Del. Ch. 234, 2 A.2d 904 (1938); Brewer v. Boston Theatre Co., 104 Mass. 378 (1870).

43. Bliss v. Linden Cemetery Ass'n., 87 N.J.Eq. 494, 505, 91 Atl. 304, 308 (Ch. 1914).

44. Von Armin v. American Tube Works, 188 Mass. 515, 74 N.E. 680 (1905) (Axiomatic that an illegal transaction entered into by board of directors cannot be ratified). See also Fletcher, Private Corporations §5795 (perm. ed. rev. repl. 1943). But *see*, Corbus v. Alaska Treadwell Gold Min. Co., 187 U.S. 455 (1903) (Suit by shareholder to enjoin the directors from paying illegal tax was not upheld where cost of suit was disproportionate with the amount of the tax).

45. Note, 53 Harv. L. Rev. 1368, 1369 (1940).

46. See Kessler v. Ensley, 123 Fed. 546 (C.C. N.D. Ala. 1903); Solomont & Sons Trust v. New Eng. Theatres Operating Corp., 326 Mass. 99, 93 N.E.2d 241 (1950) (For a discussion of this case see Landstrom, *op cit. supra* note 34); Claman v. Robertson, 164 Ohio St. 61, 127 N.E.2d 429 (1955).

47. See note 27 *supra*. In addition, a plaintiff may overcome these defenses by showing that the action complained of may fall within an exception to the rule. See notes 29-33 *supra* and text thereto.

pated in the benefits,[48] or was guilty of laches in bringing the suit,[49] most courts will not hear the plaintiff's cause.

The foregoing defenses do not directly prevent the bringing of suits but may indirectly deter their prosecution.

CONCLUSION

Cursory consideration of the ratification and the nonratification rules would perhaps lead to a conclusion that they are diametrically opposed. More critical examination, however, reveals that this is not so.

It is evident that whether a court subscribes to the doctrine that directors' fraud can be ratified or that it cannot be ratified, it must make an initial characterization of the act as fraudulent, so as to come within the application of the particular rule to which it adheres. The transitionally nebulous concept of "fraud" has thus far defied, and presumably will continue to defy, reasonably precise delimitation. Consequently, courts, when making this initial characterization, have wide lattitude. It is likely that this inherent flexibility will generally be so utilized as to effect substantial justice irrespective of the rule involved.

Even so, directors' knowledge that fraudulent acts may be ratified can have no other result than to seriously impair the deterrent influence of a derivative suit and to make less confining their scope of allowable conduct. The argument that "strike suits" are effectively discouraged by the ratification rule is demonstrably fallacious. Any restraint imposed by the ratification rule upon the commencement of derivative suits is entirely indirect; it operates not to prevent institution of the suit but merely to prevent recovery after institution. In a true "strike" suit, recovery on the merits can scarcely be considered the motivating factor, and if the suit is bona fide, surely a minority shareholder's right to demand that directors faithfully protect and advance the corporation's interests should not be prejudiced either by a majority's determination that they should not be protected or by the inconvenience and expenses which might be occasioned by defending a suit to enforce it.

Interests of the corporation, its employees, its directors, its shareholders and the ultimate interest of the public must be care-

48. Haines v. Mid-West Wholesale Grocery Co., 273 Ill.App. 595 (1933); "Courts of Equity, in ordinary cases, will refuse relief to those suitors who do not come into equity with clean hands, or who have ratified or acquiesced in the wrong complained of." Liken v. Shaffer, 64 F.Supp. 432, 442 (N.D. Ia. 1946.)

49. Liken v. Shaffer, 64 F.Supp. 432, 446 (N.D. Ia. 1946) (dictum); Pollitz v. Wabash R.R., 207 N.Y. 113, 100 N.E. 721, 726 (1912) (dictum).

fully weighed by courts presented with questions involving ratification of fraud. Faced with this bewildering complexity of often divergent interests, it is readily apparent that robot-like application of either rule would, if carried to its logical extreme, be both unrealistic and unjust.[50] Fortunately such applications are at worst infrequent,[51] and in any case unnecessary.

Analysis of each rule indicates that anomalous positions may be reached under either. The exceptions to the ratification rule have the result of negating ratification; the defenses which may be interposed to a suit brought in a nonratification jurisdiction, in effect, allow ratification.[52] Hence, in many respects the differences between the rules is more apparent than real. It is submitted, however, that if a choice must be made, adherence to the nonratification rule in conjunction with the coercive influence of the derivative suit will tend to discourage managerial deviation from the path of unswerving fidelity, thus rendering less frequent the necessity for judicial intervention of any sort.

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50. See notes 29-33 *supra* and text thereto. See also note, 53 Harv. L. Rev. 1368, 1375 n. 35 where the question is posed: What would a court following the nonratification doctrine do if application of the rule would result in financial ruin to the corporation? It is difficult to believe that any court would carry the doctrine of nonratification to such an extreme.

51. See Claman v. Robertson, 164 Ohio St. 61, 128 N.E.2d 429 (1955) (Court appeared willing to carry the rule of ratification to the extreme of allowing stock with an alleged value of $200.00 per share to be sold to corporate directors for $27.50).

52. See notes 48, 49 *supra*.