the reorganization plan materially alters the obligation. Again, general knowledge of the superior position of dissenters would make it difficult to obtain acceptance of a plan for the reorganization of a guaranteed issue.

One possible solution would be to make the surety a party to the principal's reorganization and work out a modification of his liability also. Section 76 of the Bankruptcy Act (48 Stat. 925 (1934), 11 U.S.C.A. § 204 (supp. 1935)) expressly provides that those secondarily liable can thus be dealt with in cases in which debts of individuals are extended under § 74 (47 Stat. 1467 (1933), 11 U.S.C.A. § 202 (1933)). The natural implication from a failure to include a similar provision in § 77B is that no jurisdiction of the court over sureties was intended. Furthermore any attempt to permit the modification of dissenting creditors' rights against a solvent surety raises a serious constitutional question as to the scope of the bankruptcy power. If it is recognized that, in many cases, reorganization of the principal may be effected only by these means, an amendment of § 77B incorporating provisions such as those of § 76 may perhaps be sustained over the objections of a minority creditor. If the surety is insolvent, however, the constitutional problem is less serious. See *In re Central Funding Corp.*, 75 F. (2d) 256 (C.C.A. 2d 1935).

Corporate Reorganization—Tentative Approval of a Plan under § 77B of the Bankruptcy Act—[Federal].—In a reorganization proceeding under § 77B of the Bankruptcy Act (28 Stat. 912 (1893), 11 U.S.C.A. § 207 (supp. 1935)) proponents of two plans of reorganization petitioned the court for tentative approval of one of them to determine which should be submitted to creditors and stockholders for their acceptance. *Held*, the "debtor plan" is tentatively approved and is ordered to have prior submission. But "it is with full reservation on my part to modify the plan which I am now approving, or to disapprove it entirely, if objections thereto appear persuasive on final hearing." *In re Pressed Steel Car Co. of N.J.*, C.C.H. Bankr. Service, par. 3760 (D.C. Pa. Jan. 1936).

In another recent reorganization, one plan was submitted for tentative approval of the court prior to submission of the plan to creditors and stockholders for their acceptance. Opponents objected on the ground that a plan must be accepted by two-thirds of the affected creditors and a majority of stockholders before a court can confirm the plan. *Held*, objection overruled. § 77B(f) (48 Stat. 912 (1934), 11 U.S.C.A. § 207(f) (supp. (1935)), which provides for final approval of a plan as fair and feasible, does not prohibit preliminary consideration of a plan. Tentative approval will aid creditors and stockholders in deciding which, if any, plan to accept and resubmissions of modified plans will be avoided. "If two-thirds of each class of creditors and a majority of the stockholders approve this plan, it will be confirmed." *In re Long-Bell Lumber Co.*, C.C.H. Bankr. Service, par. 3607 (D.C. Mo. July 8, 1935).

Most courts refrain from approving any plan until it has been duly accepted by the required parties. See *Downtown Investment Ass'n v. Boston Metropolitan Bldg. Inc.*, C.C.H. Bankr. Service, par. 3807 (C.C.A. 1st, Jan. 14, 1936). It is questionable whether the language of the court in the *Long-Bell* case can be reconciled with § 77B (e)(1) which provides that "A plan of reorganization shall not be confirmed until it has been accepted in writing .... by or on behalf of creditors .... and .... stockholders." 48 Stat. 918 (1934), 11 U.S.C.A. § 207(e)(1)(supp. 1935). If the court meant that it would without further consideration confirm the plan, contingent only upon its being accepted by the required number of creditors and stockholders, confirmation in effect preceded acceptance. But it is difficult to determine whether the statute should prohibit the carefully guarded position taken in the *Pressed Steel* case. The same procedure was followed in *In re Prudence Bonds Corp.* (C.C.H. Bankr. Service, par. 3675 (D.C. N.Y., Oct. 29, 1935)). Perhaps the statute contemplated the consideration of a plan by creditors and stockholders, uninfluenced by court decree that the plan submitted is fair and feasible. Incorporation of such a decree in the letters sent to creditors and stockholders before acceptance does exert influence. Nevertheless, the wording of the statute does not prohibit approval which is really tentative.

The influence of tentative approval on acceptors is one of the factors which prompts proponents of a plan to resort to it. Others are: (1) once a court has passed on the fairness of the plan opponents will find difficulty in prevailing on the court to retract, thus minimizing possible modifications; (2) proponents may seek tentative approval as offering greater assurance of the court's recognition and allowance of fees for services rendered and expenses incurred "in connection with the proceeding and the plan." § 77B(c)(9), 48 Stat. 917 (1934), 11 U.S.C.A. § 207(c)(9) (supp. 1935). A court, in considering the expenditures of a debtor in possession or a trustee in advancing a plan, may be willing to approve them only after finding the plan a fair and feasible one.

In view of the influence on acceptors and the natural reluctance of a court to retract its tentative approval, the hearing at which a plan is considered for such approval under present practice is inadequate. Notice of the hearing to stockholders and creditors does not include copies of the plans to be considered. As a result, proponents of the plan are well prepared to substantiate their position while opponents, who may have had no opportunity to scrutinize the plan or prepare objections, may be at a disadvantage in convincing the court of the validity of their objections. If adequate notice of the hearing, including copies of all proposed plans, were given to all parties interested, many benefits might accompany the tentative approval procedure. Not only would the plan approved be tempered by the proposals of all parties interested, but there would also be no acceptances to influence the judge for or against a proposed plan. See *In re Consolidated Coal Co.*, 11 F. Supp. 594 (Md. 1935); *In re Celotex Co.*, 12 F. Supp. 1 (Del. 1935); *In re United Railways and Electric Co.*, 11 F. Supp. 717 (Md. 1935). As suggested in the *Long-Bell* case, creditors and stockholders would be less confused when only one plan is submitted to them, than when they are confronted by several plans, none of which has been considered by a court. Determination of fairness and feasibility prior to submission of the plan for acceptance would eliminate delays caused by the required resubmission of modified plans to adversely affected creditors and stockholders. § 77B(f)(7), 48 Stat. 919 (1934), 11 U.S.C.A. §207 (f) (7) (supp. 1935); *In re Celotex Co.*, 12 F. Supp. 1 (Del. 1935); Friendly, The 1935 Amendment of the Railroad Reorganization Act, 36 Col. L. Rev. 27, 37 (1936); Frank, Some Realistic Reflections on Corporate Reorganization, 19 Va. L. Rev. 698, 715 (1933). The delay and expense of submitting a plan to those classes not adversely affected, whose acceptances are not required (§ 77B(e)(1), 48 Stat. 918 (1934), 11 U.S.C.A. § 207(e)(1) (Supp. 1935)) would be prevented. Those classes would be ascertained at the preliminary hearing prior to the submission of any plan. Under the present practice plans are needlessly submitted to classes not adversely affected because proponents cannot identify such classes in advance. Weiner, Corporate Reorganization, 34 Col. L. Rev. 1173 (1934); *In re Nat'l Lock Co.*, 9 F. Supp. 432 (Ill. 1934). The recent amendment to the Railroad Reorganization section of the Bankruptcy Act (49 Stat. 911 (1935), 11 U.S.C.A. § 205(d) (supp. 1935)) seems to recognize the benefits to be derived from tentative approval by providing for court approval of the plan before its submission to creditors and stockholders. See Friendly, The 1935 Amendment of the Railroad Reorganization Act, 36 Col. L. Rev. 27, 37 (1936).

Corporations—Repurchase Agreements—Right of Stockholders to Object to Their Enforcement—[New Jersey].—Preferred stockholders of X corporation brought a bill to enjoin certain other preferred stockholders from attempting to enforce stock repurchase agreements, and to have the agreements declared void. About one-third of the stock, or $8,000,000 par, had been sold to the corporation's consumer-customers by its employees who represented that, at the option of the holders, the corporation would repurchase at par. No such agreement appeared on the face of the stock. The remainder of the stock was sold through the regular channels and these purchasers neither received an option to resell to the corporation, nor knew that some of the stock was being sold with this privilege. At the time the bill was filed, 21 suits were pending to enforce the repurchase agreements. The corporation at all times has been solvent and now has a large surplus. On motion to dismiss the bill, *held*, motion denied. The option to resell is unenforcible because it deprives the other preferred stockholders of their status of equality. *Hoops v. Leddy*, 182 Atl. 271 (N.J. 1936).

In this country corporations are generally permitted to purchase their own stock. 6 Fletcher, Cyclopedia Corporations §§ 2848, 2849 (perm. ed. 1931). Existing limitations upon the exercise of this power have been developed almost exclusively for the protection of creditors of the corporation. *In re Tichenor-Grand Co.*, 203 Fed. 720 (D.C. N.Y. 1913); *Otsego Paper Co. v. Slosberg*, 230 Mich., 260, 202 N.W. 991 (1925); 42 Yale L. J. 1128 (1933). While creditors may, of course, be seriously injured by the depletion of assets caused by a corporation's purchasing its own stock, the remaining stockholders may be injured irrespective of injury to creditors. Through such purchases, the management can displace the voting control, give preferences to stockholders in the cash assets, deplete the fund of capital necessary for efficient operations, and create, in some cases, a fictitious appearance of success. Levy, Purchase by a Corporation of Its Own Stock, 15 Minn. L. Rev. 1, 22 (1930); 1 Duke Bar Ass'n J. 25, 27 (1933). Yet, courts have rarely recognized these possibilities of injury. See *Price v. Pine Mt. Iron and Coal Co.*, 32 S.W. 267 (Ky. 1895). The possibility of the management's abuse of its power to issue new stock led to the doctrine of preemptive rights to protect a stockholder's interest in the assets of the corporation (as well as his voting control). Perhaps a parallel rule requiring the corporation to give all stockholders an opportunity to dispose of a ratable proportion of their shares whenever the corporation purchases its stock should be recognized. The adoption of such a rule would seriously hamper the present freedom enjoyed by corporations in purchasing their stock, but since this power is fraught with possibilities of abuse, a rule requiring such dealings to be open and deliberate may be socially desirable. Levy, Purchase by a Corporation of Its Own Stock, 15 Minn. L. Rev. 1 (1930); Nussbaum, Acquisition by a Corporation of