(1891); Walsh, Equity 187 (1930). A board could require that new airports be located at a point consistent with the public interest and aviation needs, where there was least interference with the actual or prospective use of the land. If, nevertheless, there was depreciation the board could decree, at the petition of either the landowner or the aviation company, compensation for "airspace rights" in return for which the landowner would recognize the right of the airport to operate. See Bell, Air Rights, 23 Ill. L. Rev. 250 (1928). Although any attempt to determine the permanent depreciation of undeveloped land would encounter serious practical difficulties, adjustment of the conflicting interests would probably be more equitable than that achieved at present by the nuisance approach. In insuring the aviation interests against future complaints by the landowner, and against future use obstructing the airways, the scheme suggested would enable aviation interests to invest with security and thus would achieve one of the purposes of the zoning acts passed in some states. See Report of the Commission on Airport Zoning and Eminent Domain, 2 Air Commerce Bull. 325 (1931); Grover, Legal Basis of Municipal Airports, 5 J. of Air Law 410 (1934); Elliott, Unobstructed Airports Approaches, 3 J. of Air Law 207 (1932). In addition, the scheme would permit of compensation whenever aviation needs caused a serious invasion of the landowner's interests. Thus, the damage caused by an expanding industry could be shifted from a single landowner to the community in the form of higher airplane rates. With respect to airports already located this board could be set in motion at the request of either the landowner or aviation interests for condemnation of airspace rights. See 2 Lewis, Eminent Domain §§ 511–14 (3d ed. 1909); 1 *ibid.* § 408; Blair, Federal Condemnation Proceedings, 41 Harv. L. Rev. 29 (1927). To attain uniformity of regulation and a co-ordinated airport system, it would probably be desirable to have this board set up by the federal government, under the commerce clause, perhaps under the jurisdiction of the Department of Air Commerce. For a discussion of the constitutionality of federal control, see Bogert, Problems in Aviation Law, 6 Corn. L. Q. 271 (1921); Grover, Legal Bases of Municipal Airports, 5 J. of Air Law 410, 432 (1934).

Although the scheme suggested will face many practical difficulties, if intelligently administered it might produce the following benefits: prevention of litigation, more equitable distribution of damage to realty interests inevitably caused by the development of the aviation industry and promotion of the development of a co-ordinated aviation system.

Bankruptcy—Provability of Bank Stockholder's Liability before Assessment—[Federal].—The plaintiff, a receiver for a national bank, sued the defendant stockholder on an assessment made in 1934. Three years before, the bank had been declared insolvent and closed to business. The defense was that this debt had been discharged by the defendant's discharge in bankruptcy in 1933. Even though no assessment had at that time been made, these shares of stock had been listed as a liability (as well as included in the defendant's schedule of assets). *Held,* for the plaintiff. Liability on a stock assessment is statutory, not contractual. Since the liability of a stockholder is contingent until an actual assessment is made, the bank did not have a provable claim in bankruptcy. As there is discharge only from provable debts, this obligation was not discharged. *Slaughter v. Brown,* 16 F. Supp. 494 (N.J. 1935); aff'd, *Brown v. O'Keefe*, 85 F. (2d) 885 (C.C.A. 3d 1936), *cert.* granted, 57 Sup. Ct. 322 (1937).*

The court's holding that a bank stockholder's liability for future assessment is not discharged in bankruptcy is inconsistent with the Act's policy of debtor relief. Bank stock has the peculiar capability of being either an asset or a liability. If the bank is operating at a profit, the stock will have an affirmative value and will therefore be sold as an asset by the trustee in bankruptcy, thus relieving the bankrupt from liability for future assessments. *Keyes v. Myhre*, 143 Minn. 193, 173 N.W. 422 (1919); but see Ill. State Bar Stats. 1935, c. 16a, ¶ 6 ("No transfer of stock shall operate as a release of liability . . . ."). At the other extreme, if an assessment has been made before the filing of the petition in bankruptcy, there is no doubt that this would constitute a provable claim which would be discharged in the bankruptcy proceedings. § 63a (1); 30 Stat. 562 (1898); 11 U.S.C.A. § 103 (1927). The principal case presents the intermediate situation in which the stock has no salable value and yet upon which no assessment was made until after the stockholder's discharge in bankruptcy. In holding that the bank did not have a provable claim, the court termed the stockholder's liability statutory, and not contractual. 16 F.Supp. 494, 496–98. Most of the cases cited by the court, however, held this liability statutory for purposes not present in bankruptcy cases. *McClaine v. Rankin*, 197 U.S. 154 (1905) (statute of limitations); *Christopher v. Norvell*, 201 U.S. 216 (1906) (married woman owned stock); *cf. Hendrickson v. Helmer*, 7 F.Supp. 627 (Idaho 1934). Furthermore most bankruptcy cases have explicitly interpreted this liability as arising out of an implied contract. *In re Rouse*, 91 Fed. 514 (D.C. Ill. 1898); *Van Tuyle v. Schwab*, 174 App. Div. 665, 161 N.Y.S. 323 (1916), aff'd, 220 N.Y. 661, 116 N.E. 1081 (1917). Thus, the court should have held this a provable claim within § 63a (4)—"founded . . . . upon a contract express or implied,"—unless the contingent nature of a liability before assessment prevents the application of this section.

The omission in the Bankruptcy Act of 1898 of any provision for proving contingent claims, when contrasted with express stipulation in previous acts, might well have led courts to conclude that the omission was deliberate. But at an early date a generous construction was given to § 63a (4) and proof was allowed against a bankrupt indorser upon a note which matured after the filing of the petition in bankruptcy but before the period for filing claims had expired. *Moch v. Market St. National Bank*, 107 Fed. 897 (C.C.A. 3d 1901); *In re Semner Glass Co.*, 135 Fed. 77 (C.C.A. 2d 1905), aff'd, 203 U.S. 141 (1906); *Colman v. Withoft*, 195 Fed. 250 (C.C.A. 9th 1912). Later, in a case involving a contract claim, the Supreme Court considered bankruptcy equivalent to an anticipatory breach and allowed proof of the claim. *Central Trust Co. v. Chicago Auditorium Ass'n*, 240 U.S. 581 (1916). Then, in 1931, the Court without resorting to the doctrine of anticipatory breach extended the rule of the *Moch* case by allowing proof of a claim against a bankrupt indorser on a note not maturing until after the expiration of the period for filing claims. *Maynard v. Elliott*, 283 U.S. 273 (1931). Since the levying of an assessment upon bank stock is analogous to the maturity of a note, the listing of such stock as a liability should be sufficient to discharge a bankrupt stockholder even though the assessment is not made until after the period for filing claims has expired. New York courts have consistently employed this approach

* *Cf.* the very recent case of *Erickson v. Richardson*, 86 F. (2d) 963 (C.C.A. 9th 1936) (assessment made within period for filing claims. *Held*, provable).

and, contrary to the principal case, have held that the stockholder's discharge in bankruptcy released him from the bank's claim on later assessment. *Van Tuyle v. Schwab*, 174 App. Div. 665, 161 N.Y.S. 323 (1916), aff'd, 220 N.Y. 661, 116 N.E. 1081 (1917); *Richards v. Schwab*, 101 Misc. 128, 167 N.Y.S. 535 (1917); *Broderick v. Britting*, 147 Misc. 363, 264 N.Y.S. 8 (1933); *cf. State v. Cruickshank*, 51 Ohio App. 61, 199 N.E. 611 (1935). See also, *Irons v. Manufacturers' National Bank*, 17 Fed. 308 (C.C. Ill. 1886). Similarly, where the bankrupt has been subject to a call for the unpaid portion of his subscription for stock of an insolvent corporation, the corporation's claim has been held provable and discharged in bankruptcy. *Burke v. Maze*, 10 Cal. App. 206, 101 Pac. 438 (1909); see 62 A.L.R. 988 (1929). Under the Bankruptcy Act of 1867. however, the bankrupt has been held not discharged from liability for future calls. *Garrett v. Sayles*, 1 Fed. 371 (C.C.R.I. 1880), aff'd, 110 U.S. 288 (1884); *Sayre v. Glenn*, 87 Ala. 631, 6 So. 45 (1889).

If the Supreme Court should reverse the decisions in the lower courts and hold the bankrupt discharged, it will be necessary for the bankruptcy court to provide some machinery for the proof and allowance of claims arising from the ownership of bank stock subject to future assessment. See 14 Va. L. Rev. 469, 472 (1928). Three modes of distribution are possible: (1) to pay dividends before assessment to the bank with the other creditors; (2) to preserve a proportionate amount of each dividend for the bank until assessment is actually made; (3) to pay dividends to the bank only if assessment is made before the final dividend. The last suggestion affords but little protection to bankrupt stockholders since, even where assessement is certain, it may not actually be declared until after the final dividend. The second method may somewhat extend the bankruptcy proceedings but assessment usually follows in a sufficiently short time to make this extension a reasonable one. One advantage of the second procedure is that, if the bank did reopen without an assessment, the dividends reserved for the bank could be distributed to the other creditors and the bank would have received no unearned dividend to the detriment of other creditors. On the other hand, the latter system creates additional administrative problems which are avoided if the first method is used. In the instant case, however, the Supreme Court can hold the stockholder discharged without deciding which procedure is preferable.

Bills and Notes—Consideration—Liability of Accommodation Maker on Fictitious Note Given to Accommodated Bank—[New York].—The defendant owned a mortgage bond for $30,000 executed by A and guaranteed by the vice-president of the plaintiff bank. In consideration of the satisfaction of an equal amount of her mother's amply secured note to the bank, the defendant assigned the bond to the bank. Subsequently, at the plaintiff's request, the defendant executed and surrendered to the bank her note for $30,000 and received at the same time a letter stating that the note was to serve only as evidence of A's debt to the bank and that the note would not be enforced. The bank brought suit on the note. No further evidence explaining the transaction was offered in the trial court. A directed verdict for the defendant was affirmed in the appellate division, and the plaintiff appealed. *Held*, reversed. The accommodation maker is chargeable with notice of the bank's purpose to puff its assets and is estopped to assert the agreement that the note would not be enforced. *Mount Vernon Trust Co. v. Bergoff*, 272 N.Y. 192, 5 N.E. (2d) 196 (1936).

Only one other case has been found where the accommodated bank was granted re-