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 recovery against the accommodator even though there was neither proof that the accommodator was acting for the express purpose of deceiving creditors or bank examiners nor proof of detrimental reliance by creditors. See *Bangor Trust v. Christine*, 297 Pa. 64, 146 Atl. 545 (1929). The dominant tendency has been to allow recovery only where suit is brought by the receiver of an *insolvent* bank. *Niblack v. Farley*, 286 Ill. 536, 122 N.E. 160 (1919); *German American Finance Corp. v. Merch. and Mfg. Bank*, 177 Minn. 529, 225 N.W. 891 (1929); *Iglehart v. Todd*, 203 Ind. 427, 178 N.E. 685 (1931); *Denny v. Fishter*, 238 Ky. 127, 36 S.W. (2d) 864 (1931). Since the receiver represents creditors who may be presumed to have relied on the fictitious assets, recovery can be justified under conventional notions of estoppel. 38 Harv. L. Rev. 239 (1925). But even a receiver has been denied recovery where there was no proof that the accommodator acted in bad faith. *Lensing v. Rayzor*, 41 F. (2d) 224 (C.C.A. 5th 1930); see also *In re Tasker's Estate*, 182 Pa. 122, 37 Atl. 924 (1897). Courts are in conflict where the accommodator was aware of the bank's intended use of the note, but where there was no insolvency and consequently no detrimental reliance by creditors could be presumed. Recovery denied: *First National Bank v. Felt*, 100 Iowa 680, 69 N.W. 1057 (1897); *First State Bank v. Morton*, 146 Ky. 287, 142 S.W. 694 (1912); *Anamore National Bank v. Dockter*, 56 N.D. 33, 216 N.W. 206 (1927). Recovery allowed: *Cedar State Bank v. Olson*, 116 Kan. 320, 226 Pac. 995 (1924); *Bay Parkway Bank v. Shalom*, 270 N.Y. 172, 200 N.E. 685 (1936). Allowing recovery by a solvent bank, in any case, runs counter both to § 28 of the Negotiable Instruments Law which makes absence of consideration a defense good against an accommodated party, and to § 16 which provides that an instrument is not binding until it is delivered for the purpose of giving effect thereto. Courts have met these difficulties by stretching the concepts of consideration and delivery, by a resort to a vague and expanding notion of estoppel, or by a recognition that a quasi-penal obligation is being created and enforced to discourage future deception. See *Cedar State Bank v. Olson*, 116 Kan. 320, 226 Pac. 995 (1924) (estoppel invoked although no reliance); *Peoples State Bank v. Hunter*, 216 Mo. App. 334, 264 S.W. 54 (1924) (consideration found in that the accommodator benefited from the maintenance of the market value of his stock); *First National Bank v. Baer*, 277 Pa. 184, 120 Atl. 815 (1923) (technical delivery found by excluding parol evidence of contemporaneous oral agreement not to hold accommodator liable). Although an illegal contract is generally not enforced, recovery is granted in this situation to avoid the result that the law seeks to guard against—falsification of assets. It is of course arguable that recovery will encourage the bank to obtain fictitious notes; but the bank's purpose is to falsify rather than to increase its assets. Again, the nature of the transaction will make suit by the bank infrequent.

Difficulties attend any solution of the problems raised by a suit on a fictitious note. A vague public policy hardly justifies a rule which automatically imposes liability without regard to the good faith of the accommodator or detrimental reliance by creditors. Such a rule may often result in a hardship to accommodators naive in banking ways and trusting a bank whose position naturally gives it dominance. See *Lensing v. Rayzor*, 41 F. (2d) 224, 225 (C.C.A. 5th 1930). On the other hand, a rule involving an inquiry into the accommodator's good faith obviously involves evidential difficulties. Nevertheless, liability should not be imposed unless there is proof either of bad faith on the part of the accommodator or detrimental reliance by creditors. This is especially true in New York where the heavy criminal penalties imposed upon bank officers for entries made with the intent to deceive the examiner make less urgent an additional deterrent in the form of civil liability. New York Penal Law 1930, c. 41 § 304. *Cf.* Mass. Gen. L. 1932, c. 226, § 53A; Smith-Hurd's Ill. Rev. Stat. 1933, c. $16\frac{1}{2}$, § 4. It is noteworthy, moreover, that criminal prosecution for making false entries may encounter a logical difficulty as a result of the instant decision since the note, being enforceable against the maker, is not fictitious.

Although the application of a rule requiring either bad faith or reliance for recovery would generally result in the liability of the accommodator since the character of the transaction *prima facie* implies bad faith, the rule would be sufficiently flexible to prevent injustice in a proper case. In the instant case the bank's request was made more plausible by past dealings related to the accommodation note. Since there was no showing either of damage to strangers or of an intent to deceive on the part of the accommodator, the imposition of liability with its consequent windfall for the bank was unfortunate.

Building and Loan Associations—Constitutionality of Statute Limiting Withdrawals by Representative of Deceased Stockholder—[Oklahoma].—The plaintiff was the executor of a stockholder who purchased his stock in the defendant building and loan association in 1930. An Oklahoma statute of 1921 provided that "upon the death of a stockholder his legal representative shall be entitled to receive the full amount paid in by him and legal interest thereon . . . ." Okla. Stat. 1921, § 9800. Three months prior to the stockholder's death, the statute was amended to provide that "upon the death of a stockholder his legal representative shall be entitled to receive the full amount paid in by him and such proportion of the profits as the by-laws may determine . . . less a proportionate share of any loss sustained by such association." Okla. L. 1933, c. 54. At the time of the stockholder's death the defendant had sustained losses; and since this case was decided has been placed in receivership. The plaintiff claimed the amount due under the 1921 act on the ground that the amendment impaired the contractual obligation of the defendant to pay and deprived the estate of property without due process of law. *Held*, the 1921 statute gave the plaintiff a vested right of which he could not constitutionally be deprived. *Baker v. Tulsa Bldg. & L. Ass'n*, Okla. Sup. Ct. (Nov. 15, 1936) (rehearing pending).

Though the impairment of contract and due process clauses are relied upon by the court, the ultimate question in this case is whether the state properly exercised its reserved power to alter and amend laws relating to corporations. Okla. Stats. 1931, § 9716. Whether or not a contract right is vested depends upon whether or not it is subject to alteration under the reserve power. See Chitty, J., in *Pepe v. City & Suburb Bldg. Soc.*, [1893] 2 Ch. 311, 313–14; 4 Univ. Chi. L. Rev. 139 (1936). The principle involved in the use of the reserve power is that of compromise between individual and public interests. *Home Bldg. & L. Ass'n v. Blaisdell*, 290 U.S. 398 (1934); *Fornataro v. Atlantic Coast Bldg. & L. Ass'n*, 10 N.J. Misc. 1248, 163 Atl. 240 (1932). It is arguable that the decision in this case contravenes both public and individual interests.

Building and loan associations are organized for mutual aid in financing home purchasing and construction. Thompson, Building Associations §§ 23, 314 (2d ed. 1899); Thornton & Blackledge, Building Associations § 122 (2d ed. 1899). Because of their importance in building development, these associations are considered quasi-public and are subject to greater governmental control than ordinary private corporations.