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Irrevocable Proxies

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information to the members of each constituent, as the statute permits the appearance of "any interested person" to show cause why the application should not be granted. Sufficient information concerning the status and nature of all constituent corporations and the presence of these corporations before the tribunal will permit the approval, modification or disapproval to be predicated on facts and figures rather than on a scale of probabilities.



IRREVOCABLE PROXIES

Introduction

Broadly speaking, any delegation of authority to perform an act may come within the definition of a proxy.¹ However, the term as used in law generally has specific reference to the right to vote conferred upon another by a record shareholder in a stock corporation. At common law, in the absence of special authorization, a shareholder had to vote in person or not at all; the right of voting by proxy was unknown.² The nationwide dispersion of the stockholders of "big" or "listed" corporations clearly called for some convenient form of absentee voting so that the policies of these corporations could be expeditiously executed.³ To satisfy this need, made urgent by modern business demands, many states, including New York,⁴ have enacted statutes expressly authorizing the granting of proxies.

The New York statute, Section 19 of the General Corporation Law, provides that "[e]very member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may vote by proxy." This is an absolute right and thus requires no permissive by-law to effectuate it.⁵ Under this section, a proxy's authority

¹ See *Manson v. Curtis*, 223 N. Y. 313, 319, 119 N. E. 559, 561 (1918). "Proxy" has in fact a threefold connotation. It comprehends: (a) the *consent or authorization* given by one person to another authorizing the latter to act for the former; (b) the *instrument or paper* evidencing such authorization; and (c) the *person* authorized to act." PRASHEK, CASES AND MATERIALS ON THE LAW OF CORPORATIONS 456 (2d ed. 1949).

² See *Matter of Hart v. Sheridan*, 168 Misc. 386, 390, 5 N. Y. S. 2d 820, 824 (Sup. Ct. 1938); see *Axe, Corporate Proxies*, 41 MICH. L. REV. 38 n. 1 (1942).

³ Without such a form of absentee voting, it would often be very difficult to obtain a necessary quorum. See BALLANTINE, CORPORATIONS § 180 (Rev. ed. 1946).

⁴ N. Y. GEN. CORP. LAW § 19; see also N. Y. MEMB. CORP. LAW § 41.

⁵ *Matter of Flynn v. Kendall*, 195 Misc. 221, 88 N. Y. S. 2d 299 (Sup.

must be in writing and can last no longer than eleven months unless a definite period of duration is specified. It may not be issued for a sum of money or anything of value,⁶ and any infraction of this rule constitutes a misdemeanor.⁷ However, perceiving that there may be a dual interest in the corporate stock, failure of the law to allow one other than the record owner to vote the stock would, under certain circumstances, be clearly inequitable. The statute therefore allowed ". . . the parties to a valid pledge or to an executory contract of sale . . . [to] agree in writing as to which of them shall vote the stock pledged or sold until the contract of pledge or sale is fully executed."⁸ This material interest which may exist in one other than the record owner is recognized by a provision of the Stock Corporation Law which states that ". . . the record holder of stock which shall be held by him as security or which shall actually belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to such *pledger* or to such *actual owner* of such stock, a proxy to vote thereon."⁹

The courts have been divided as to the legality of an "irrevocable proxy." Some courts are of the opinion that irrevocable proxies create a suspension of the ordinary rights of ownership, *i.e.*, voting rights, or restrict the free alienation of the stock, and hence deem such authorizations to be void as against public policy.¹⁰ Others, where a fixed period of duration is involved, disclaim a violation of public policy.¹¹ Still others argue that the legislature, in allowing

Ct. 1949). "A non-stock corporation may provide in its by-laws as to proxies for members, and their duration." N. Y. GEN. CORP. LAW § 19.

⁶ N. Y. STOCK CORP. LAW § 47 (except as expressly authorized by § 47-a, added by Laws of N. Y. 1953, c. 863).

⁷ N. Y. PENAL LAW § 668. But see *Galibert v. Hoffman, Inc.*, 120 Misc. 212, 198 N. Y. Supp. 854 (Sup. Ct.), *aff'd*, 207 App. Div. 847, 201 N. Y. Supp. 903 (1st Dep't 1923).

⁸ N. Y. GEN. CORP. LAW § 19 (this provision now substantially incorporated in new § 47-a). "It is well settled that a pledgee of stock, in the absence of an express agreement, has no right to vote the stock." *Fisk Discount Corp. v. Brooklyn Taxicab Transp. Co.*, 270 App. Div. 491, 502, 60 N. Y. S. 2d 453, 464 (2d Dep't 1946).

⁹ N. Y. STOCK CORP. LAW § 47 (emphasis added); see *Matter of Atlantic City Ambassador Hotel Corp.*, 62 N. Y. S. 2d 62, 67 (Sup. Ct. 1946).

¹⁰ See *Sullivan v. Parkes*, 69 App. Div. 221, 229, 74 N. Y. Supp. 787, 793 (1st Dep't 1902) (Such an irrevocable power would prevent its free alienation as it would prevent a subsequent purchaser from exercising one of the essentials of ownership, *i.e.*, that of voting the stock.). "The right to vote stock is an essential attribute of the ownership . . . and may not be detracted from or amended and may not be made irrevocable by proxy. . . ." *William Randall & Sons v. Lucke*, 123 Misc. 5, 6, 205 N. Y. Supp. 121, 123 (Sup. Ct. 1924).

¹¹ The case of *Brown v. Britton*, 41 App. Div. 57, 58 N. Y. Supp. 353 (4th Dep't 1899), involved an agreement to endure for three years to the effect that: the shareholders were not to sell, transfer or assign any of the stock without the consent of the other stockholders; if a stockholder wished to dispose of his stock, he was to give preference to the other parties to the agree-

such an irrevocable grant of voting rights by way of voting trust, precluded the use of such a proxy for a period longer than ten years.¹² Further beclouding this "gray" area of the law,¹³ the term "power coupled with an interest"¹⁴ found its way into some opinions of this jurisdiction. An early case construed the applicable statute to prohibit the issuance of a proxy coupled with an interest,¹⁵ but it appears that this determination has not been uniformly accepted.¹⁶

Two problems, therefore, presented themselves for solution: clarification of the law with respect to the legality of irrevocable proxies and the necessity for some device to cope with the needs of the ever-expanding sphere of modern corporate activity. These needs, briefly, are the securing of financial aid quickly without the imposition of unduly oppressive terms, and managerial competency in instances involving the establishment and maintenance of a sound, continuous corporate policy while in the process of rebuilding or reorganization. Irrevocable proxies have been recognized in other jurisdictions under circumstances similar to these. As in New York, they have been upheld where accompanied by a pledge¹⁷ or sale of the stock.¹⁸ They have also been recognized when given in return for aid from corporate creditors,¹⁹ and even where the avowed pur-

ment; finally, if one of the stockholders should be unable to vote personally, he was to give to one of the contracting parties an irrevocable power of attorney to vote the stock. Of such agreements, the court stated: "It is true that, as a rule, those who have the largest interests in a corporation are entitled to control its affairs, and where a combination to effect such a result is entered into for a fixed, definite and reasonable period of time . . . it is not necessarily obnoxious to the rule which condemns as illegal all contracts in restraint of alienation." *Id.* at 64, 58 N. Y. Supp. at 357. *Cf.* *Hey v. Dolphin*, 92 Hun 230, 36 N. Y. Supp. 627, 631 (Sup. Ct. 1895).

¹² See *Kittinger v. Churchill Evangelistic Ass'n, Inc.*, 151 Misc. 350, 360, 271 N. Y. Supp. 510, 521 (Sup. Ct. 1934), *aff'd mem.*, 244 App. Div. 876, 281 N. Y. Supp. 680 (4th Dep't 1935).

¹³ "Upon that question [*i.e.*, as to the validity of an irrevocable proxy for a fixed period of time] the decisions of the courts are not at all uniform." *Sullivan v. Parkes*, *supra* note 10.

¹⁴ ". . . [W]henver a proxy is supported by consideration and given for a purpose beneficial to the holder rather than merely for the purpose of authorizing the holder to express the view of the stockholder, then the proxy is coupled with an interest and irrevocable, even though not expressly declared to be irrevocable." Comment, 47 MICH. L. REV. 547, 554 (1949). See Note, 159 A. L. R. 307, 308 (1945).

¹⁵ *Matter of Germicide Co. of New York*, 65 Hun 606, 20 N. Y. Supp. 495 (1st Dep't 1892); see *Matter of Glen Salt Co.*, 17 App. Div. 234, 244, 45 N. Y. Supp. 568, 574 (3d Dep't), *aff'd mem.*, 153 N. Y. 688, 48 N. E. 1104 (1897); see STEVENS, PRIVATE CORPORATIONS 534 (2d ed. 1949).

¹⁶ See the discussion of such a power coupled with an interest in *Hey v. Dolphin*, 92 Hun 230, 36 N. Y. Supp. 627, 632 (Sup. Ct. 1895).

¹⁷ See *Deibler v. Chas. H. Elliott Co.*, 368 Pa. 267, 81 A. 2d 557 (1951).

¹⁸ See *Groub v. Blish*, 88 Ind. App. 309, 152 N. E. 609 (1926).

¹⁹ See *Mobile & O. R. R. v. Nicholas*, 98 Ala. 92, 12 So. 723 (1893).

pose was to maintain control of the corporation²⁰ or to conserve and carry out a fixed corporate policy.²¹

Section 47-a of the Stock Corporation Law

On the strength of the recommendation made by the Law Revision Commission,²² Section 47-a was enacted authorizing the creation of irrevocable proxies upon compliance with statutory mandates. The statement of authority must be entitled "irrevocable proxy"; it must state that it is irrevocable; and it must be conferred in writing. Such a power may be lawfully given in four instances: to "... (a) a pledgee under a valid pledge; (b) a person who has agreed to purchase the stock under an executory contract of sale; (c) a creditor or creditors of the corporation . . . who extend or continue [to extend] credit to the corporation in consideration of the proxy . . . (d) a person who has contracted to perform services as an officer of the corporation . . . if such proxy is required by the contract of employment, as part of the consideration therefor. . . ." ²³ It may be seen that the first two provisions which were formerly found in the General Corporation Law,²⁴ and which formed an apparent exception to the general rule of revocability, have now been embodied in the Stock Corporation Law and clearly denominated "irrevocable proxy." In addition to this statutory rearrangement, two new instances have been added where such a grant of authority may be lawfully given. If a creditor is to receive the power, the proxy must state that it was given in consideration for the extension or continuation of credit,²⁵ while a similar proxy given to a prospective officer must state that it was given in consideration of the contract of employment.²⁶ These provisions were inserted to eliminate any possible future misunderstanding concerning the circumstances under which the proxy was given. A similar statement is not required in the case of a pledgee or a vendee under an executory contract of sale since it is clear that the parties, in this situation, would be fully aware of the nature and import of the transaction.

²⁰ See *State v. Pacific Waxed Paper Co.*, 22 Wash. 2d 844, 157 P. 2d 707 (1945).

²¹ See *Ecclestone v. Indialantic*, 319 Mich. 248, 29 N. W. 2d 679 (1947); *Chapman v. Bates*, 61 N. J. Eq. 658, 47 Atl. 638 (1900).

²² 1953 LEG. DOC. NO. 65(G), REPORT, N. Y. LAW REVISION COMMISSION (printed in McKinney's Session Law Service of N. Y., Feb. 25, 1953, No. 2 at A-86).

²³ N. Y. STOCK CORP. LAW § 47-a(c), (d). These provisions, however, do not apply to a banking corporation.

²⁴ N. Y. GEN. CORP. LAW § 19.

²⁵ N. Y. STOCK CORP. LAW § 47-a(c). In addition to this declaration, the proxy must state "... the amount thereof, and the name of the person extending or continuing [the] credit. . . ."

²⁶ *Id.* § 47-a(d). The proxy must also state "... the name of the employee and the period of employment contracted for."

Although a statute with a wider scope might perhaps seem preferable, nevertheless, the legislature has wisely avoided employing the all-inclusive term "proxy coupled with an interest," which several other jurisdictions have adopted.²⁷ More has been written about what this power *is not* than what it actually *is*.²⁸ Nonetheless, the four instances where an irrevocable proxy may be lawfully given in New York basically embody the same concept which underlies a proxy coupled with an interest. In both situations, the proxy-holder has an interest in the execution of the authority itself, as opposed to merely voicing the stockholder's opinion on a particular matter.

As long as the proxy-holder has a pecuniary interest, there is no necessity for the statutory safeguard of revocability since an abuse of the authority then becomes a remote possibility. By the same token, the statute allows this irrevocable period to endure only so long as this interest persists. Therefore, once the pledge is redeemed, the executory contract of sale performed, the corporate debt paid, or the period of employment terminated, the authority becomes revocable notwithstanding a provision to the contrary. For when the interest disappears, the law no longer considers the donee a proper person to exercise an irrevocable right to vote. In the cases involving an extension of credit to the corporation or an officer's employment contract, the authority also becomes revocable when the period of duration, if one was specified, has come to an end, or in any case, three years after the proxy was given, whichever time is the lesser. However, a new irrevocable proxy may be executed to extend the period.²⁹ The duration of a general proxy as provided for in the General Corporation Law,³⁰ remains unchanged.

To protect a purchaser of the stock without actual notice after an irrevocable proxy has been given, the statute declares that the irrevocable provision is not enforceable ". . . unless notice of the proxy and its irrevocability appears plainly on the face of the stock certificate representing the stock on which voting rights are thereby granted."

Although the specific situations where an irrevocable proxy may be lawfully given are clear, and no ambiguity exists concerning the duration of such a proxy, the wording of the statute presents and leaves unsolved several problems. It has been noted that an irrev-

²⁷ KY. REV. STAT. § 271.315 (Baldwin, 1953); MINN. STAT. § 301.26(4) (1949); OKLA. STAT. tit. 18, § 1.60(d) (1951); WASH. REV. CODE § 23.32.080 (1952).

²⁸ See *Lane Mortg. Co. v. Crenshaw*, 93 Cal. App. 411, 269 Pac. 672, 679 (1928).

²⁹ This last provision relates to instances where the corporate debt has not yet been paid or where the period of employment has not come to an end. The imposition of the maximum period of three years was evidently inserted to prevent the period of irrevocability from extending over too long a period of time without renewal.

³⁰ N. Y. GEN. CORP. LAW § 19 (11 months only, unless otherwise specified).

ocable proxy may be lawfully given to a corporate creditor or to an officer under an employment contract, but the stock upon which such an authority may be given remains undefined.

It is well settled by decisional law that treasury shares may not be voted by the corporation.³¹ Therefore any transaction not involving a divestment of corporate title would seem to be ineffectual to create voting rights on shares so held. Whether this rule, since it is not a statutory prohibition, should be relaxed to permit a corporation to issue irrevocable proxies on shares of its own stock held in the corporate treasury is a question to be seriously considered. However, such a relaxation might prove a useful tool in the hands of an unscrupulous few, thereby opening the door to the abuses the rule was intended to obviate. Assuming, therefore, that there will be no exception allowing a corporation to issue such proxies on treasury shares, these shares will continue to be non-voting stock until a transfer of ownership has been effected. A corporation probably will not be able to grant proxies to creditors or officers on shares once issued and subsequently reacquired.

It is fundamental that no one has the right to vote authorized but unissued shares, and a corporation would be precluded from issuing proxies on these. It would seem, therefore, that the stock which would be available for such a plan would be limited to issued and outstanding shares, or shares held by the corporation as a stockholder in another corporation. If it pledges or contracts to sell these shares, its position is that of pledgor or vendor, and even prior to the enactment of Section 47-a, it was lawful for the parties to such a transaction to agree in writing as to who could vote the stock.³² These provisions are reiterated in Section 47-a and it was, apparently, not the intent of the legislature to encompass this situation within the provision permitting the grant of such a power to corporate creditors. The inference, then, is compelling that the latter provision was intended to apply only to those cases where a corporation seeks to grant an irrevocable power on shares of its own stock. The available shares would then be restricted to those issued and outstanding in the hands of corporate stockholders.

Proxies could be obtained by agreement between assenting shareholders and corporate creditors,³³ or by corporate solicitation. Solicitation of proxies from shareholders has, in the past, been primarily employed as a means of perpetuating the management in control.³⁴ However, with the enactment of Section 47-a, in the absence of a stockholder-creditor agreement to give proxies in return for financial

³¹ *Vail v. Hamilton*, 20 Hun 355 (N. Y. 1880), *aff'd*, 85 N. Y. 453 (1881); *see Swan v. Stiles*, 94 App. Div. 117, 124, 87 N. Y. Supp. 1089, 1093 (4th Dep't 1904).

³² N. Y. GEN. CORP. LAW § 19.

³³ *See Mobile & O. R. R. v. Nicholas*, 98 Ala. 92, 12 So. 723 (1893).

³⁴ *See BALLANTINE, CORPORATIONS* § 180 (Rev. ed. 1946).

aid, it seems inevitable that corporate solicitation of "irrevocable proxies" will become an accepted practice. It is to be noted, of course, that whether or not a shareholder wishes to give such a proxy is a matter solely within his discretion. Assuming, however, that the corporation is able to solicit from *consenting* stockholders the number of proxies necessary to satisfy its contractual obligations, there is no statutory limit on the number of proxies which may be granted to the creditors or officers. Under such circumstances, corporate control previously vested in a stockholder faction may be effectively wrested from it and lodged in a group of "outsiders." It is to be further noted that here it is not the *corporation* which is granting the proxy as prescribed by the statute, but the *stockholder*.

While answers to the foregoing questions would be merely speculative at this time, it will be necessary to consider them in any future application of Section 47-a.

Conclusion

An irrevocable proxy should prove to be an effective device in securing benefits for a corporation which, under normal circumstances, it would not receive. It will aid the corporation in securing financial aid by allowing potential creditors of the corporation an opportunity to acquire a voice in the corporate management. If they may exercise some degree of protection over their investment, financial aid will be more readily forthcoming. Further, a corporation in financial straits will be better able to bargain for such assistance rather than merely accept the least oppressive terms available. Continuity of management and policy, in addition to being more conducive to material gain, are the best means of achieving administrative harmony within the corporation itself. Therefore, if an employment contract includes the granting of irrevocable proxies to a potential corporate officer, it offers an inducement to competent men to accept managerial positions, since it assures support for a particular and continuous corporate policy thereby allowing far-sighted planning. The statutory device may serve as a stabilizing influence on a corporation which is in the process of rebuilding or reorganizing.

The suggestion has been made that the present-day voting trust is the result of a need for an irrevocable proxy.³⁵ The structure of the voting trust requires the transfer of legal title to the stock to a voting trustee, thus consolidating the voting power and thereby effectuating a consistent corporate policy.³⁶ The original owner receives a certificate from the voting trustee entitling him to an amount equal

³⁵ See Ballantine, *Voting Trusts, Their Abuses and Regulation*, 21 TEX. L. REV. 139, 147 (1942).

³⁶ See PRASHKER, *CASES AND MATERIALS ON THE LAW OF CORPORATIONS* 462-467 (2d ed. 1949).

to the dividends declared on the stock so transferred. For all intents and purposes, however, his contractual relations with the corporation have been completely severed. The voting trust has been employed in instances involving corporate promotion and to guarantee control to a group of majority stockholders who, for one reason or another, prefer the status of voting trust certificate-holder.³⁷ Such a trust may also form part of the consideration for assistance, financial or otherwise, rendered to a corporation undergoing a process of reorganization. However, "[a] voting trust should be regarded like a dictatorship as a temporary expedient for some special emergency need."³⁸ It is submitted that instances where a voting trust is created in favor of creditors in return for financial aid may now be eliminated by substitution of the irrevocable proxy.³⁹ In this way, an irrevocable grant of voting power could be given, but, at the same time, one would still retain his status of shareholder with its appurtenant privileges such as the right to bring a derivative action,⁴⁰ the right to inspect corporate books,⁴¹ and the right to a financial statement.⁴² The maximum period of duration imposed upon a voting trust, ten years in New York,⁴³ is, of necessity, an arbitrary one.⁴⁴ On the other hand, the duration of an irrevocable proxy under this new section persists only so long as the reason for its creation shall last. It may be that judicial efforts to liken holders of voting trust certificates to shareholders have found an answer in the irrevocable proxy.⁴⁵ Why can it not be employed in place of the voting trust where the confessed purpose is the retention of control in order to insure stability of management and policy?

As seen above, the new section should prove instrumental in securing benefits for a corporation which it might not ordinarily obtain. However, certain improvements might be made to further protect the interest of a shareholder who has granted an irrevocable proxy, and which might be of assistance in facilitating the application of this new section. It would seem advisable that a proxy au-

³⁷ See DEWING, *THE FINANCIAL POLICY OF CORPORATIONS* 388-395 (3d rev. ed. 1934).

³⁸ See Ballantine, *supra* note 35, at 153.

³⁹ See N. Y. STOCK CORP. LAW § 47-a(c).

⁴⁰ N. Y. GEN. CORP. LAW § 61.

⁴¹ N. Y. STOCK CORP. LAW § 10.

⁴² *Id.* § 77.

⁴³ *Id.* § 50 ("A stockholder, by agreement in writing, may transfer his stock to a voting trustee or trustees for the purpose of conferring the right to vote thereon for a period not exceeding ten years upon the terms and conditions therein stated.")

⁴⁴ See Ballantine, *Voting Trusts, Their Abuses and Regulation*, 21 TEX. L. REV. 139, 164 (1942).

⁴⁵ See Comment, 36 CALIF. L. REV. 281, 286 (1948). It has also been suggested that the substitution of the voting trust with the irrevocable proxy would effect a saving of transfer taxes incidental to the creation and termination of voting trusts. See BALLANTINE, *CORPORATIONS* § 184b (Rev. ed. 1946).

thorization should be required to state specifically what the representative may or may not do. If the power is a general one enabling him to vote only on ordinary corporate matters, it should so state. No power to vote for a sale of corporate assets, a dissolution or similar acts of extraordinary import can be implied from such a power.⁴⁶ If the proxy-holder is to have authority to vote on such matters, this too should be clearly stated to avoid the possibility of subsequent confusion or uncertainty as to the scope of his authority. The proxy statement along with a description of the representative's power should then be filed with the corporation and the limitations imposed by the stockholder could be made binding on the corporation. This would obviate the injustice of binding stockholders by unauthorized acts of their proxy.⁴⁷ There should be a provision for the removal of the proxy-holder as a consequence of any abuse of the license so conferred. Though it may not be seriously questioned that a shareholder could obtain relief under such circumstances, a quick, efficient method for the removal of the cause of the abuse would appear desirable.

As previously noted, corporate solicitation of "irrevocable proxies" from shareholders seems inevitable by reason of the enactment of Section 47-a. Whether this solicitation is for the benefit of corporate creditors or officers, the corporation will, in most instances, derive a benefit therefrom. Consequently, a shareholder who is requested to voluntarily grant such an authority should do so only if the corporation supplies him with information sufficient to enable him to determine whether or not to relinquish his voting rights. It is submitted that the request should contain information concerning the status of the parties in relation to one another; a brief account of the agreement which requires the granting of such a proxy; the consideration for the undertaking and the purposes to be accomplished; the duration of the authority; and finally, the interests to be surrendered, the rights to be acquired and the consequences thereof.⁴⁸ Once the shareholder has granted such a power, it should be incumbent on the corporation to notify him when the debt has been repaid or the period of employment has terminated so that he may act accordingly. He may then permit the authority to continue subject

⁴⁶ See *Abbot v. American Hard Rubber Co.*, 33 Barb. 578, 584, *aff'd*, 33 Barb. 586 (N. Y. 1861).

⁴⁷ See *Axe, Corporate Proxies*, 41 MICH. L. REV. 225, 253 (1942).

⁴⁸ In too many instances involving managerial solicitation of proxies, the stockholder was sent a proxy card inviting him to sign his name and return the card without being furnished the information essential to an intelligent exercise of the right to vote. See *LOSS, SECURITIES REGULATION* 521 (1951). An excellent model regarding the solicitation of proxies and the information required to be furnished may be found under the rules of the Securities Exchange Commission. See 17 CODE FED. REGS. §§ 240.14a-1 to 240.14a-10, Sched. 14A (Supp. 1952).

to revocation,⁴⁹ or he may desire to withdraw it altogether. In the alternative, there could be a provision automatically terminating such authority upon the termination of the cause for its creation. The onus, however, should not be on the shareholder alone to revoke the authority at the risk of a possible injury to his interests by an unauthorized act.



LEGISLATIVE RECOGNITION OF THE DIVISIBLE DIVORCE—NEW PROTECTION FOR THE STAY-AT-HOME SPOUSE

Immediately upon the performance of the marriage ceremony, the husband by law, morals, and usage takes upon himself the responsibility of supporting his wife.¹ This duty arises notwithstanding the personal income or wealth of the wife or her ability to provide for herself and her family,² and continues until terminated by either the death of one of the parties,³ or the cessation of the marital relationship by legal decree without provision for support.⁴ Thus if the court did not exercise its discretionary power to award support in

⁴⁹ N. Y. STOCK CORP. LAW § 47-a(c), (d) ("... [T]he proxy becomes revocable after the pledge is redeemed... the executory contract of sale... performed... the debt of the corporation... paid or [when] the period of employment... has terminated...").

¹ N. Y. DOM. REL. LAW § 51; see *Goldman v. Goldman*, 282 N. Y. 296, 299, 26 N. E. 2d 265, 266 (1940); *Oberlander v. Oberlander*, 179 Misc. 459, 467, 39 N. Y. S. 2d 139, 146 (N. Y. Dom. Rel. Ct. 1943); see GROSSMAN, *NEW YORK LAW OF DOMESTIC RELATIONS* 88 (1947); 41 C. J. S. 404.

² *DeBrauwere v. DeBrauwere*, 203 N. Y. 460, 96 N. E. 722 (1911); see *Clark v. Clark*, 203 Cal. 414, 264 Pac. 761 (1928); *Davis v. Davis*, 65 Cal. App. 499, 224 Pac. 478, 479 (1924); *Shebley v. Peters*, 53 Cal. App. 288, 200 Pac. 364, 366 (1921); *Rich v. Rich*, 12 N. J. Misc. 310, 171 Atl. 515, 519 (1934); *Coleman v. Coleman*, 37 Ohio App. 474, 175 N. E. 38, 39 (1930); *Matter of Harper*, 288 Pa. 52, 135 Atl. 617, 618 (1927); *Mihalcoe v. Holub*, 130 Va. 425, 107 S. E. 704, 706 (1921).

³ See *Wilson v. Hinman*, 182 N. Y. 408, 410-412, 75 N. E. 236, 237-238 (1905); *Barnes v. Klug*, 129 App. Div. 192, 195, 113 N. Y. Supp. 325, 328 (1st Dep't 1908).

⁴ *Staub v. Staub*, 170 Md. 202, 183 Atl. 605 (1936); accord, *Lynn v. Lynn*, 302 N. Y. 193, 97 N. E. 2d 748 (1951); see *McCoy v. McCoy*, 191 Iowa 973, 183 N. W. 377, 378 (1921); *Eldred v. Eldred*, 62 Neb. 613, 87 N. W. 340, 341 (1901); *People v. Schenkel*, 258 N. Y. 224, 226, 179 N. E. 474, 475 (1932). "Unless otherwise provided by local law, a decree of divorce by a court having jurisdiction of the cause and of the parties, dissolving the bonds of matrimony puts an end to all obligations of either party to the other, and to any right which either has acquired by the marriage... except so far as the court granting the divorce, in the exercise of an authority vested in it by the legislature, orders... alimony to be paid by one party to the other." *Barrett v. Failing*, 111 U. S. 523, 524-525 (1884).