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The Powers of the New York Court of Appeals. By Henry Cohen & Arthur Karger.

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BOOK REVIEWS

THE POWERS OF THE NEW YORK COURT OF APPEALS. By Henry Cohen & Arthur Karger. New York: Baker, Voorhis & Co., Inc., 1952. Pp. 904.

In concluding a review of Mr. Henry Cohen's original treatise on the powers of the Court of Appeals, Justice Philip Halpern, then Professor of Law at the University of Buffalo Law School, wrote:

"To appraise the book, in conclusion, in the light of the purpose which Mr. Cohen has set out to fulfill, he has succeeded in furnishing to the practitioner in New York State a competent guide through the mazes of the problems of Court of Appeals jurisdiction, a guide of unquestionable accuracy, but one to which the reader is tempted, in view of the nature of the subject, to assign the title which Maimonides gave his work: *A Guide to the Perplexed*."¹

The eighteen years that have elapsed since publication of what should properly be called the first edition of Cohen on The Powers of the New York Court of Appeals, have brought some important constitutional and statutory changes to the appellate scene.² These changes, however, have done little to lessen the legalistic mist that has surrounded Court of Appeals practice since its beginning, and this despite the best intentions on the part of member of the Legislature, the Judicial Council and the Court of Appeals to liberalize and simplify the procedure. As the authors confess:

"A few paragraphs of the Constitution and a few sections of the Civil Practice Act purport to state the jurisdiction of the Court of Appeals. In actual practice, however, a surprisingly complex body of principles has developed—as the length and detail of this book bear witness."³

The magnitude and multiplicity of the problems that beset the attorney en route to the Court of Appeals, however, simply emphasized the invaluable service which the authors have done the bar in publishing this current edition. The wonder is that they have been able to condense the material necessarily covered into

1. 24 Geo. L. J. 783, 790 (1936).

2. *E. g.* The 1942 revision of Article 38 of the CIVIL PRACTICE ACT; the 1944 amendment of Article VI, Section 7 of the NEW YORK STATE CONSTITUTION.

3. Cohen & Karger, Preface.

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one volume without sacrificing clarity, exposition or literary style. For it is immediately apparent that none of the questions which arise to plague the appellate lawyer are capable of solution without a thorough knowledge and understanding of the historical background of the concept itself.

It is in this respect, above all others, that the book excels. The discussion of each topic has as an integral part a thorough but, in most cases, concise explanation of its inception and growth through various constitutional and statutory phases. When the reader has found in Cohen & Karger the rule to be applied to his case, it will be a source of no little comfort to him to know that he can cite an authority fully recognized by the Court.⁴

In all fairness to those who have worked so untiringly in their efforts to simplify the practice, it must be noted that there have indeed been improvements made since 1934, and especially since 1942, when the Article 38 of the Civil Practice Act was revised.

One outstanding step forward was taken, for example, when the Legislature saw fit to eliminate the possibility of having an appeal irrevocably dismissed simply because an unwitting attorney made the error, perfectly understandable in some cases, of seeking a review by permission when in fact his appeal lay as of right. It was the almost invariable result in such cases that by the time his motion for leave to appeal was denied on the ground that it was a matter of right, the would-be appellant's time to appeal had expired. Fortunately, the practitioner has been relieved of the chance of finding himself squirming on the horns of this dilemma.⁵ One may well wonder why so glaring an injustice was not corrected earlier, but clearly such an inquiry is outside the scope of this text.

In further fairness to the Judicial Council and the Legislature, it should also be noted that some attempts at simplification have been inexplicably nullified by the Court itself. For example, the 1942 revision of C. P. A. §591 seems on its face to clear up a knotty problem which confounded many an experienced attorney: from which judgment or order should the appeal be taken? The revisers certainly can't be blamed for the way in which this section has been treated by the Court of Appeals in cases arising

4. Cohen & Karger, Preface by Chief Judge Loughran; see also *Erie County Water Authority v. Western New York Water Company*, 304 N. Y. 342, 107 N. E. 2d 479 (1952), *cert. denied*, 21 U. S. L. Week. 3145.

5. This particular reform was enacted by Laws of 1939, ch. 84; other similar corrective measures were taken in Laws of 1942, ch. 297, specifically the amendment of C. P. A. § 592. See Cohen & Karger pp. 422-434.

in Surrogate's Court. The authors point out with telling effect the impossibility of reconciling decisions like *Matter of Lawrence*⁶ with the plain language of Section 591.⁷ But, in general, it must be confessed that progress is being made and, with the able assistance of Messrs. Cohen and Karger, the path of the appellant becomes increasingly safer.

Turning to architectural changes which the authors have made in the current edition, there are two which will be especially helpful to the bar. The separate section on appeals in criminal cases should prove to be of immeasurable assistance to those confronted with those problems, and the inclusion of a set of forms serves a purpose which cannot be denied even by those who pretend to scoff at the use of a form book. Nor should a review of this book omit a word of commendation for a splendid index.

If *A Guide to the Perplexed* be an appropriate sub-title for this volume, let it be said that the authors have succeeded in guiding the perplexed practitioner to an authoritative conclusion.

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PROTECTION OF INTERNATIONAL PERSONNEL ABROAD. LAW AND PRACTICE AFFECTING THE PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATION. By Carol McCormick Crosswell. New York: Oceana Publications, 1952, Pp. vii, 198.

Mrs. Carol McCormick Crosswell has written a very timely book which fills a need in the American literature of recent International Law. Basdevant's classic, *Les Fonctionnaires internationaux* is still important, but, published in 1931, is somewhat out of date. In the last two years, two German monographs have been published on the subject: one by Barandon (*Die Rechtsstellung der internationalen Functionäre*) (*in Deutsche Landesreferate* for the IIIrd Congress for Comparative Law, pp. 955) and the other by Kordt (*in Festschrift für E. Kaufman*, pp. 191 ff). Thus, we have now our own book on the subject. Mrs. Crosswell's book has eleven chapters which deal with the following subjects:

6. 297 N. Y. 596, 75 N. E. 2d 269 (1947).

7. Cohen & Karger, pp. 114-118. The most recent example of this trap is *Matter of Mittelstaedt*, 128 N. Y. L. J. 951 (Oct. 27, 1952), appeal dismissed in memorandum decision handed down Oct. 24, 1952. on ground appeal was taken from wrong paper.