years. Such a selection of cases cannot fail to give a distorted picture of the present-day law of evidence. On the only spot on which this reviewer is able to measure the extent of this distortion it exists in a substantial degree. The chapter on opinion evidence would give any student quite a false impression of the present law on this subject in Illinois and, I strongly suspect, of the law in any other state.

The law of Evidence in the United States fairly screams for re-examination and re-statement. Those who undertake that task will find McKelvey on Evidence of real value. It is of course an elementary work. It discusses only the main branches of the subject. It does not purport to detail the twigs and leaves of the tree. Its emphasis is upon the historical development of the law. But a lifetime of research by an industrious, scholarly lawyer has gone into it.

WILLARD L. KING*  


In order to get down to the business of reviewing this book, it is necessary to fight one's way, so to speak, through the psychological road blocks and tank traps that Col. McCormick, consciously or not, sets up. It may be that he has Chicago so well schooled in his particular type of egomania—or should we say Chicagolandomania?—that these obstacles to a reasonable objectivity are not apparent to Chicagoans.

I happen to come from St. Louis and to work for the St. Louis Post-Dispatch, and I must confess that there is, in our provincial community, a small mental reservation to the legend under the box-car type that daily chugs its way across Page 1 of the Chicago Tribune, whether the news warrants an eight-column banner line or not. I refer, of course, to the line, "The World's Greatest Newspaper."

I say, a small mental reservation. Knowing Chicago to be a wholesomely vulgar city, I presume to say that this legend produces, among those who know and love newspapers, a belly-laugh.

The book I have before me is in this same McCormick-Tribune bully-boy tradition. It is written by a Tribune man about Tribune accomplishments. It is subtitled: "A history of the Chicago Tribune's fight to preserve a free press for the American people." It is published by the Chicago Tribune. And on the back page of the blur sheet, lest anyone miss the point, appears this placard: "How and why the Chicago Tribune has spent $3,000,000 fighting for the freedom of the press—told for the first time in one book." Hear, hear! if the Colonel will forgive a British touch.

A number of causes are described in the book, which, incidentally, is written in the tired manner of an old rewrite man who has to fill a couple of columns for the 2:00 a.m. edition under the lash of an underpaid night editor.

In 1916, the Tribune ran an editorial whose text is not reprinted in Mr. Kinsley's book, but whose caption was "Ford Is an Anarchist." Ford brought a plain old-fashioned libel suit against the Tribune for $1,000,000. Libel suits are always, of course, brought for fancy figures. The Tribune spent $300,000 (one-tenth of that back page

* On a typical fifty pages there are 384 citations, of which 17 are to English cases and 26 are to cases decided since 1918. The remainder are largely citations to cases decided before 1900.

3 Pp. 379-79.


* Of the Chicago Bar.
$3,000,000 to defend the suit, and 2,000,000 words of testimony, so says Mr. Kinsley, were taken. (These big figures sort of get you down.) Upshot: “Mr. Ford had his name cleared of any anarchistic odium by the verdict, which found the Tribune guilty.”

And then, in a perfect non-sequitur, Mr. Kinsley continues: “The Tribune felt it had proved its point and established a precedent in newspaper law when the jury fixed the damages at 6 cents, with 6 cents added for costs.” I don’t get it.

Anyone who isn’t bemused with figures, or the drop from $1,000,000 to 6 cents, knows that the Tribune got a beating in this suit. The Tribune’s point was that Ford was an anarchist. The jury said No. How, then, did the Tribune prove its point, and what’s all this got to do with the noble principle of press freedom?

The second big cause cited by Mr. Kinsley has real point. Under the administration of Mayor William Hale Thompson (Big Bill the Builder, A-Punch-in-the Snoot-for-the-King-of-England), the Tribune was sued for criticizing the city of Chicago. The city’s contention was that, inasmuch as a corporation can sue for libel, and inasmuch as the city of Chicago is a corporation, it could sue for libel, the alleged damage being that the Tribune’s criticism was hurting the corporation’s credit.

The answer was, of course, that a public corporation is in quite a different category from a private corporation. The Illinois Supreme Court held that “every citizen has a right to criticize an inefficient or corrupt government without fear of civil as well as criminal prosecution.” Score one for the Tribune.

By far the most impressive exhibit in the book is the Tribune’s noteworthy fight against the so-called Minnesota gag law. This was a truly vicious statute permitting the state to enjoin from publication any person regularly publishing a “lewd and lascivious newspaper or magazine,” or a “malicious, scandalous and defamatory newspaper, magazine or other publication.” The statute was invoked against two small Minneapolis newspapers, one of which was the Saturday Press, “which had attacked gambling and organized crime in Minneapolis.”

The lower court, without considering the merits of the charges made by the Saturday Press, granted an injunction against the publishers, who were thus forbidden to edit, publish, circulate, or give away their paper. The Supreme Court of Minnesota upheld the lower court.

All honor to the Chicago Tribune and Col. McCormick for espousing the cause of the Saturday Press and carrying the fight successfully to the Supreme Court of the United States, which knocked out the Minnesota gag law as unconstitutional under the Fourteenth Amendment. The law provides adequate remedies for libel after publication; it is unthinkable in free America that any law should gag a newspaper prior to publication, as the Minnesota law attempted to do. Score two for the Tribune.

Other causes are cited by Mr. Kinsley. One was the bitter battle waged by Col. McCormick against the licensing provisions of the NRA newspaper code. He felt that to impose a license on a newspaper, such as was being imposed on other businesses by the NRA, would impair and jeopardize the constitutional guarantees of a free press.

In the opinion of many others at the time, Col. McCormick was fighting a sham battle, since the newspaper code, like other industrial codes, was concerned with the newspaper as a corporate entity rather than with the newspaper as a social institution. In other words, the NRA was interested in causing corporations to follow certain rules about wages, hours, and competitive conditions, and not in impairing journalistic freedom.

In any event, the Tribune won this fight and the code, as finally approved, included
a work of supererogation, namely, a declaration that nothing in the code should be construed as restricting or interfering with press freedom, as guaranteed by the Constitution. Mr. Roosevelt signed the code, saying that the press freedom clause was "pure surplusage." "While it has no meaning," said the President, "it is permitted to stand because it could have no such legal effects as would bar its inclusion." Maybe this was a great victory for Col. McCormick and the Tribune and maybe, too, 989 angels can dance on the head of a pin.

Mr. Kinsley's final big cause is the Associated Press case, in which Col. McCormick is a co-defendant. Now, this is a very peculiar and very interesting case, but it happens at the present time to be under advisement by the Supreme Court of the United States, and just why, under the circumstances, Mr. Kinsley included it in his book is not altogether apparent.

It is obvious that Col. McCormick considers the suit a personal affront to him by the Department of Justice and the New Deal, but it is not so obvious why it was treated here. The stated objective of the book is to tell the story of how the Tribune has fought for the rights of the press, "and how these rights have been redefined and reaffirmed, to the benefit of everyone who seeks to express opinions concerning his city, state, or federal government." Until the Supreme Court hands down its decision in the Associated Press case, no one can say that these rights "have been redefined and reaffirmed."

Mr. Kinsley wrote a whole book about the Chicago Tribune's fight for press freedom. It would have a more kindly and sympathetic audience if the Chicago Tribune itself did not abuse that freedom by the pollution of its own news columns with its publisher's hatreds and prejudices, instead of confining them where they belong, to his editorial page. Mr. Kinsley wrote a whole book, but we think, from the story he had to tell, he should have held it down to a column and a half.

RALPH Coghlan


This, as far as I know, latest book of the Dean is a collection of three lectures which were delivered, as it seems, before the faculty and student body of a Pennsylvania College. The scope of these lectures is indicated by their titles: "Why Law?," "What Is Law?," and "What May Be Done through Law." Needless to say that both the Dean's learning and his wisdom are exemplified in these discussions. Needless to say, too, that the reader will find in them strong expressions of the Dean's dislike of certain trends of recent American life. There is a tendency to identify the particular system of law of nineteenth-century England and the United States with law in general. There are passages which, at least, seem to indicate that absolutism is regarded as inevitable, wherever the scheme of the classical common law is modified, and there is at least one passage which cannot go unchallenged. Statutory administrative agencies are said to "consider themselves empowered to put the claims of the employee on a higher plane of value and to ignore those of the employer whenever they come in conflict." Such an idea might conceivably occur to a layman who derives his knowledge of government adjustment of labor disputes from newspaper headlines, but it is strange.

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† Italics by the reviewer.