

for its maintenance. An Act of the Legislature empowered the city to purchase a site and tax the ratepayers for the cost. The library committee of the city council entered into a contract with C. for plans of the building which were prepared, but the scheme afterwards fell through, the money offered was not paid, nor the library built. In an action by C. for the price of the plans,

*Held*, that the city had no power to make a contract for the building and the action could not be maintained. Appeal allowed with costs.

*O'Connor*, K.C., and *Finlay McDonald*, for appellant. *Newcombe*, K.C., for respondent.

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N.S.] SYDNEY POST PUBLISHING CO. v. KENDALL. [June 15.

*Libel—Election contest—Withdrawal of candidate—Allegation of improper motives—Trial of action—Verdict for defendant—New trial.*

K. was a member of the House of Commons prior to the election in 1908, and in August of that year a letter was published in the Sydney Post, which contained the following, which referred to him: "The doctor had a great deal to say of the elections in 1904. Well, I have some recollections of that contest myself, and I ask the doctor: Why did you at that time withdraw your name from the Liberal convention? The majority of the delegates came there determined to see you nominated. Why did you not accede to their request? Doctor Kendall, what was your price? Did you get it? Take the good Liberals of this county into your confidence and tell them what happened in those two awful hours in a certain room in the Sydney Hotel that day? The proceedings of the convention were held up for no reason that the delegates was, but for reasons which are very well known to you, and three or four others whom I might mention. One speaker after another killed time at the Alexandria Hall, while you were in dread conflict with the machine. Finally the consideration was fixed and you took off your coat and shouted for Johnston. What was that consideration?"

On the trial of an action by K. against the proprietors of the Post, the jury gave a verdict for the defendants.

*Held*, DAVIES and DUFF, JJ., dissenting, that the publication could only be construed as charging K. with having withdrawn his name from the convention for personal profit, and was libellous. The verdict was, therefore, properly set aside by the