The automobile which was delivered by the defendant dealer to the plaintiff's husband was to be used for demonstration purposes only. The parties did not contemplate the sale of this demonstrator. Therefore the car actually involved was not the subject of a sale or a proposed sale.[6] Under circumstances similar to the instant case, although not involving the liability of a dealer for latent defects, it was held that the relationship between an automobile dealer and a prospective purchaser driving the former's car is one of bailor-bailee.[7] So when a dealer leaves goods with a prospective purchaser for examination, a bailment for mutual benefit is established.[8] A bailor owes the bailee the duty to inform him of defects which are, or reasonably should be, known to the bailor.[9] Since the court in the instant case found that the defendant made a reasonable inspection, he would not have been liable even on the bailment theory. It is submitted, however, that the court's decision would have been technically sounder had the bailment theory been adhered to.[10] E. M. S.

TORTS—RADIO DEFAMATION—PRIVILEGE OF JUDICIAL PROCEEDINGS—[Oregon].—During the broadcast of a murder trial the defendant's counsel said that a witness for the state "was not truthful and was lower than a rattlesnake because a rattlesnake gives warning before it strikes." That witness brought an action of libel against the counsel who made the statements, the judge who presided over the criminal trial, and the radio station on the theory that the broadcast permitted by the trial judge was unlawful and that, by reason of the untruths and malice in the statements, all the defendants participating in that wrongful act were joint tortfeasors.

The judge was held free from liability.[1] In both England[2] and the United States,[3] because of public policy, a judge is absolutely privileged as to defamatory statements in the course of judicial proceedings,[4] even

6. In Tourte v. Horton Mfg. Co. (1930) 99 Cal. App. 795, 290 Pac. 919, cited supra note 2, there was a possibility of a sale of the particular washing machine. Therefore that case can be distinguished from the instant case.

7. Harris v. Whitehall (1936) 55 Ga. App. 130, 189 S. E. 392; Hamp v. Universal Auto Co. (1933) 173 Wash. 585, 24 P. (2d) 77.

8. Israel v. Uhr (Sup. Ct. 1917) 164 N. Y. S. 50.

9. Goddard, *Outlines of the Law of Bailments and Carriers* (2nd ed. 1928) 20, sec. 20.

10. In the Restatement, *Torts* (1934) sec. 388, the liability of a supplier of a chattel is discussed. In the comment thereunder, it is stated that the rule as to a supplier of a chattel is applicable to cases of bailment. Since the instant case is strictly one of a bailment, this section might have been applied by the court in the instant case. Instead, the court quoted from sec. 402, which deals with the liability of a vendor of a chattel.

1. Irwin v. Ashurst (Ore. 1938) 74 P. (2d) 1127.

2. Scott v. Stansfield (1868) L. R. 3 Ex. 220; Law v. Llewellyn (1906) 1 K. B. 487, 75 L. J. K. B. 320, 94 L. T. 359; Newell, *Slander and Libel* (4th ed. 1924) sec. 360.

3. Mundy v. MacDonald (1921) 216 Mich. 444, 185 N. W. 877; Young v. Moore (1922) 29 Ga. App. 73, 113 S. E. 701.

4. Douglas v. Collins (1934) 152 Misc. 839, 273 N. Y. S. 663, in which defamatory statements made by a judge, after he had adjourned the case,

though made falsely and maliciously. It was contended in the instant case that the absolute immunity of the judge "does not extend beyond the four walls of the courtroom" and that installation of the microphone in the courtroom was an "extra-judicial and illegal act." The Supreme Court of Oregon held that installation of a microphone in a courtroom for the purpose of broadcasting judicial proceedings was not unlawful but was a matter solely within the discretion of the trial judge.[5] It is possible that other jurisdictions might in the future hold the broadcasting of courtroom proceedings against public policy. What effect this may have on the absolute privilege of the judge is a matter of conjecture. In this connection it is interesting to note that the American Bar Association has recently gone on record as being opposed to broadcasts of judicial proceedings from the courtroom.[6]

Defamatory statements made by attorneys in their conduct of cases in court are, in England, absolutely privileged, even though irrelevant.[7] In the United States they are absolutely privileged only when pertinent to the case;[8] if irrelevant or not pertinent to the issues, the privilege is only qualified.[9] Public policy gives rise to a presumption in favor of relevancy and pertinency.[10] The court concluded that the jury's general finding for the defendant in the instant libel case involved a finding of fact that the statements made by counsel were either relevant or else non-malicious.

The radio station had made no comment during the broadcast of judicial proceedings. Publication of the statements by the radio station was held to be privileged, if defendant attorney who uttered them was privileged, presumably on the theory that publication by a radio station is analogous to publication by a newspaper. An earlier Oregon case had held that a defamatory statement qualifiedly privileged on the part of its author bestows a similar privilege on the newspaper publishing it, provided that publication in the newspaper was a reasonable method of publicizing the

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and as he was descending from the bench, and before he had proceeded more than 10 feet into the courtroom, were held made in the course of his official capacity and absolutely privileged.

5. Supra, note 1.

6. The American Bar Association in September, 1937, adopted the following new Canon 35 of the Canon of Judicial Ethics: "Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of court proceedings, degrade the court and create misconceptions with respect thereto in the minds of the public and should not be permitted."

7. Munster v. Lamb (1883) 11 Q. B. Div. 588, 52 L. J. Q. B. 726, 49 L. T. 252, 47 J. P. 805; Newell, *Slander and Libel* (4th ed. 1924) sec. 362.

8. Hastings v. Lusk (1839) 22 Wend. (N. Y.) 410, 34 Am. Dec. 330; Lawson v. Hicks (1862) 38 Ala. 279, 81 Am. Dec. 49; Maulsby v. Reifsnider (1888) 69 Md. 143, 14 Atl. 505.

9. Throckmorton's Cooley, *Torts* (1930) 359. Dicta: Maulsby v. Reifsnider (1888) 69 Md. 143, 14 Atl. 505.

10. Newell, *Slander and Libel* (4th ed. 1924) 405; Myers v. Hodges (1907) 53 Fla. 197, 44 So. 357.

statement.[11] Whether such a theory is applicable to the facts of the instant case may be a matter of dispute.[12] The general finding for the attorney necessarily meant that publication by the broadcasting station was privileged.[13]

The instant case is a logical extension of the well settled principles in defamation of privilege arising from judicial proceedings. Its special interest lies in its exposition of the different principles applicable to several types of defendants involved in a single situation, and in its being apparently the first case in Anglo-American law in which privilege has been successfully used as a defense in an action to recover for radio defamation.[14]

J. K.

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11. Israel v. Portland News Pub. Co. (1936) 152 Ore. 225, 53 P. (2d) 529; in accord Restatement, *Torts*, Tentative Draft, No. 13, sec. 1036, comment b; Preston v. Hobbs (1914) 161 App. Div. 363, 146 N. Y. S. 419.

12. This is disputable on the ground that a radio station has no control over what is broadcast during the course of judicial proceedings. The radio station has no advance knowledge of what it will broadcast under such circumstances. A newspaper publisher, however, may under ordinary circumstances, by scrutinizing a manuscript and by reading proof, exercise effective control over what the newspaper publishes. A contrary view would reject such a distinction between publication by a newspaper and by a radio station, if one were to proceed on the theory that a radio station was absolutely liable, regardless of negligence, for the broadcast of all defamatory statements. See Vold, Defamation By Radio (1934) 19 Minn. L. Rev. 611, 646.

13. Supra, note 1.

14. This statement is based on a study of all the reported English and American cases made for "Radio Defamation—Libel or Slander?" Note (1938) 23 WASHINGTON U. LAW QUARTERLY 262.