

# BALBAN v ANDALUZ

Supreme Court  
Bourke, Acting C.J.  
22 October 1965

*Traffic — damage to property — meaning of property — Traffic Ordinance, s. 41.*

The word “property” in s. 41 of the Traffic Ordinance (Cap. 154, 1965-69 Ed.) includes real property.

**Note:** When this appeal was heard, the chapter number of the Traffic Ordinance was 177 and the section in question was numbered 39.

## **Case referred to in the judgment**

*Paget v Mayo*, [1939] 2 All E. R. 362

## **Appeal by case stated**

The respondent was charged with failing to stop after damaging a wall with his vehicle. The magistrate dismissed the information, holding that the wall was not property within the meaning of the section. The prosecution appealed.

The Attorney General and B. Vaughan for the appellant  
L.W. Triay for the respondent

**10 November 1965: The following judgment was read—**

The relevant facts as rendered in this appeal by way of case stated are that the respondent when driving his lorry on a road was involved in an accident to the extent of scraping the wall of the Command Land Office with his vehicle thus causing damage to the wall and two windows. He did not stop at the place of the accident and was charged with an offence contrary to s. 39 [now s. 41] (1) and (4) of the Traffic Ordinance.

Section 39 (1) reads:

“If in any case owing to the presence of a motor vehicle on a road an accident occurs whereby damage or injury is caused to any person, vehicle, property or animal, the driver of the vehicle shall stop and if required so to do by any person having reasonable grounds for so requiring shall give his name and address and also the name and address of the owner of the vehicle.”

The learned magistrate dismissed the information since he took the view that the word “property” placed where it is in the words “any person, vehicle, property or animal” occurring in the subsection, should be given a restricted meaning to cover “something akin to vehicle or animal, i.e. personal property and does not cover real property.” If the intention was that the word “property” was to be read in its general sense it was unnecessary to include the words “vehicle” or “animal”.

The curious effect of the inclusion of the word “property” in a similar setting may be observed from the case of *Paget v Mayo*<sup>1</sup>. In that case the respondent’s vehicle hit a stone wall the property of a third party. The stone wall and the vehicle were damaged. The respondent was charged with an offence similar to that laid in the instant matter and in contravention of s. 22 of the Road Traffic Act, 1930. The justices upheld the respondent’s contention that the damage to the stone wall was not damage within the meaning of s. 22 and dismissed the charge. On appeal by case stated the decision was upheld, the court rejecting the submission that the words “any person, vehicle or animal” occurring in s. 22 should be construed as if they had been written — “Any person, property, vehicle or animal.” Commenting on this proposition the Divisional Court in a judgment delivered by Hewart, L.C.J., had this to say:

“If the legislature had intended to say “property,” nothing would have been easier than to say it. If, however, the words which have been suggested had really been inserted, the question would then have arisen: “Is not a vehicle

<sup>1</sup> [1939] 2 All E.R. 362.

somebody's property?" Nor would the difficulty have ceased there, because, when one looks at s. 22(3), it is expressly provided that:

...the expression "animal" means any horse, cattle, ass, mule, sheep, pig, goat, or dog.

Horses, cattle, asses, mules, sheep, pigs, goats or dogs are commonly somebody's property. Why should a special protection be extended to those heads of property by subs. (3) if by subs. (1) all property is already included?"

In s. 39(1) of the Traffic Ordinance the word "property" has been inserted and would no doubt cover a "vehicle" and "animal" as defined by s. 39(3).

In s. 2 of the Interpretation and General Clauses Ordinance the word "property" is given, unless the context otherwise requires, a meaning as follows:

"property" includes money, goods, things in action, land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property as above defined."

Obviously the context under consideration in this case excludes a good part of that definition. But is there any good reason for limiting the word "property" to personal property as distinct from real property, or to restrict its meaning in the context to mean "something akin to vehicle or animal." In the earlier Vehicles and Traffic Ordinance (Cap. 134, 1950 Ed.), s. 41, the words used are "any person, animal or property." Surely it is clear enough that there the word could not properly be read as exclusively referable to the genus 'animal.' There was then no definition of "animal" and it is absurd to think that the word could cover a wild animal as it would be to apply it to "any person." In that context there can be no doubt that "property" was to be taken in the wider sense and would include real or immovable property. Was there any material change when the legislature saw fit in the existing law to adopt the words "any person, vehicle, property or animal"? Having regard to the position of the word "property" as so placed and considering the difference of genus as affecting the other words, I cannot see any room for the application of an *eiusdem generis* principal of interpretation. The object of the section is apparent. It is devised for the protection of property owners who may suffer damage at the hands of what is known as the hit and run driver of a motor vehicle. Property real in its nature, and objects affixed to the realty, can be damaged in a motor accident — one may readily think of traffic islands and bollards, shop windows, lamp-posts and telegraph-poles, pavements and trees. In the opinion of this court, while the section might perhaps have been more happily drafted, there is no good reason for restricting the meaning of the word "property" in the section to mean property personal in its character or to species of vehicles and animals. It should be accorded the ordinary, grammatical sense reflected, in so far as the context obviously permits, by the definition provided in the Interpretation and General Clauses Ordinance.

Since the word is to be read as applicable also to real or immovable property, it means that by damaging the wall and windows of the building mentioned in the information the respondent did cause damage to property within the meaning of the section under which he was charged.

The appeal is therefore allowed and the order of dismissal of the information by the lower court is set aside. The case will be remitted with the opinion of this court thereon. It is directed that the magistrate do proceed with the trial of the respondent in accordance with law and in the light of this decision.