

## **THE MUNICIPALITY OF GASAN, PLAINTIFF AND APPELLEE, VS. MIGUEL MARASIGAN, ANGEL R. SEVILLA AND GONZALO L. LUNA, DEFENDANTS AND APPELLANTS.**

*G. R. No. 43486. September 30, 1936*

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-43486/>

---

### **DIAZ, J.:**

This is an action brought by the municipality of Gasan of the Province of Marinduque, against Miguel Marasigan, Angel R. Sevilla and Gonzalo L. Luna, to recover from them the sum of P3,780, alleging that it forms a part of the license fees which Miguel Marasigan failed to pay for the privilege granted him of gathering whitefish spawn (semillas de bangus) in the jurisdictional waters of the plaintiff municipality during the period from January 1, 1931, to December 31 of said year.

The Court of First Instance of Marinduque, which tried the case, rendered a decision adverse to the defendants, sentencing them to pay jointly to the plaintiff said sum of P3,780 with legal interest thereon from August 19, 1932, until fully paid, plus the costs of the suit. From said judgment, the defendants appealed to this court, attributing to the lower court the five alleged errors relied upon in their brief, as follows:

"I. The court a quo erred in holding and maintaining that, notwithstanding the fact that resolution No. 161 of the municipal council of Gasan which gave rise to the contract and bond, Exhibits A and B, respectively, of the complaint, has been declared null and void by the provincial board and by the Executive Bureau, the contract and bond in question are valid and, consequently, enforceable on the ground that said resolution No. 161 is within or had been adopted within the powers of the council.

"II. The court a quo erred in holding that even granting that the contract Exhibit A is not valid de jure, it is a de facto contract as to the defendants, particularly the defendant-grantee Miguel Marasigan.

"III. The court a quo erred in not absolving the defendants Angel R. Sevilla and Gonzalo L. Luna, sureties of the defendant Miguel Marasigan, notwithstanding the fact that resolution No. 161, by virtue of which said defendants subscribed the bond Exhibit B of the complaint, had been declared null and void by the provincial board and by the Executive Bureau.

"IV. The court a quo erred in holding that the herein defendant Miguel Marasigan had taken advantage of the privilege to catch or gather whitefish spawn in the jurisdictional waters of the municipality of Gasan, during the period from January 1, to December 31, 1931, notwithstanding the fact that counsel for the plaintiff municipality failed to present evidence, either documentary or oral, to justify said fact.

"V. The court a quo erred in not absolving each and every one of the herein defendants from the complaint, and in not ordering the plaintiff municipality to return to the defendant Miguel Marasigan the sums of four hundred twenty pesos (P420) "and eight hundred forty pesos (P840) deposited with said plaintiff, with interest thereon from the respective dates of their deposit, until their return."nona

The case was tried by the lower court with no other evidence than the admissions made by the parties in the

stipulation of facts mentioned in the body of the decision, the pertinent parts of which will be discussed later. Said stipulation and the attached papers forming a part thereof enables this court to narrate the material facts of the case, as follows:

The plaintiff-appellee municipality, on December 9, 1930, put up at auction the privilege of gathering whitefish spawn in its jurisdictional waters for the period of one year from January 1, 1931. Two bidders, Graciano Napa and Miguel Marasigan, appeared at the auction. Both attached to their respective bids the certificate of not being behind in the payment of any tax, issued by the municipal treasurer of Gasan, Marinduque, as required by the provisions of resolution No. 42, series of 1930, of the council of said municipality. Graciano Napa proposed to accept the privilege by paying P5,000 therefor, and Miguel Marasigan proposed to do likewise, but by paying only P4,200.

The council of the plaintiff-appellee municipality, in its resolution No. 161 (Exhibit 1) of December 11, 1930, rejected Graciano Napa's bid and accepted that of the appellant Miguel Marasigan, granting and selling to the latter the privilege put up at auction for the sum of P4,200, payable quarterly in advance at the rate of P1,050 a quarter (Exhibit A). To secure his compliance with the terms of the contract which was immediately formalized by him and the plaintiff, and pursuant to the provisions of section 8 of resolution No. 128, series of 1925, of the council of said plaintiff, Miguel Marasigan filed the bond, Exhibit B, subscribed on December 15, 1930, by the defendants-appellants Angel R. Sevilla and Gonzalo L. Luna, who bound themselves in said document to pay to the plaintiff the sum of P8,400, if Miguel Marasigan failed to deposit one-fourth of P4,200 quarterly in advance in the municipal treasury of Gasan, in violation of the terms of the contract executed and entered into by him and the plaintiff on December 11, 1930 (Exhibit A), for the compliance with which they became sureties.

Before the plaintiff municipality and Miguel Marasigan entered into their contract, and also before the latter's sureties executed the above-stated bond, Graciano Napa, whose bid was rejected for the reason that he had not attached thereto the certificate that he is not behind in the payment of any tax which he should have obtained from the municipal treasurer of Lemery, his native town, forwarded a protest (Exhibit 4) to the provincial board, which protest was later indorsed by said provincial board to the Chief of the Executive Bureau, alleging that the plaintiff municipality violated the provisions of section 2323 of the Administrative Code in rejecting his bid.

The provincial board, passing upon Graciano Napa's protest and acting under the authority which, in its opinion, was granted to it by section 2233 of the Administrative Code, held that resolution No. 161, series of 1930, by virtue of which the municipal council of Gasan rejected Graciano Napa's bid and accepted that of Miguel Marasigan, notwithstanding the fact that the latter offered to pay less, was invalid, and suggested that the privilege should be awarded to Graciano Napa who, in its opinion, appeared to be the highest bidder in accordance with the provisions of sections 2323 and 2319 of the Administrative Code (Exhibit 9). The Executive Bureau, concurring with the provincial board's points of view, declared, in turn, that the concession made to Marasigan was illegal in view of the fact that Graciano Napa was the highest bidder (Exhibit 13).

The plaintiff municipality, through its municipal council, exerted efforts to obtain the reconsideration of the decisions of the provincial board of Marinduque and of the Executive Bureau but, as these two entities maintained their decisions (Exhibits 14, 15, 16, 17 and 18), it decided, in its resolution No. 11, series of 1931 (Exhibit 19), to award the privilege of gathering whitefish spawn within its waters to Graciano Napa, giving him a period of six days, which was later extended to seven days, from January 8, 1931 (Exhibit 19-A), to deposit the sum of P500, equivalent to 10 per cent of his bid of P5,000, with the municipal treasurer of Gasan, so as to comply with the (Provisions of section 8 of the conditions of the public auction at which he was a bidder, warning him that if he failed to do so, the contract entered into by the plaintiff, through its president, and the appellant Miguel Marasigan (Exhibit A), would automatically take effect. Graciano Napa not only failed to make the deposit required by the plaintiff in its two above-stated resolutions Nos. 11 and 12, series of 1931 (Exhibits 19 and 19-A), but he formally declared, through his duly authorized representative, that he

yielded the privilege granted him to Miguel Marasigan or to any other person selected by the municipal authorities (Exhibit 20).

One day later, or on January 15, 1931, the president of the plaintiff-appellee municipality sent the letter Exhibit 21 to Miguel Marasigan, which reads:

"Sir:

"By virtue of Res. No. 11, c. s., as amended by Res. No. 12, same series, and the communication of Mr. J. Zaguirre dated January 14, 1931, copy of which is hereto attached, you are hereby advised that the contract entered into between you and the municipality of Gasan for the tease of the bangus fishery privilege for the year 1931 becomes effective on January 14, 1931, to run until December 31, 1931.

"You are hereby requested to appear before the session of the Municipal Council to be held at the office of the undersigned tomorrow, January 16, 1931, bringing with yourself the contract and bond executed in your favor for ratification.

"You are further informed that you are given 10 days from the date hereof, within which time you are to pay the amount of P1,050, as per tax corresponding to the first quarter, 1931."

Prior to this, but after the adoption by the municipal council of Gasan of its resolution No. 163 (Exhibit 7) on December 16, 1930, and two days before the provincial board declared said council's resolutions Nos. 161 and 163 invalid, the president of the plaintiff-appellee municipality notified the appellant Miguel Marasigan that the contract whereby he was granted the privilege of gathering white-fish spawn during the year 1931, upon his offer to pay P4,200 a year therefor, was suspended and that he should consider it ineffective in the meantime in view of the fact that the question whether he (Miguel Marasigan) or Graciano Napa was the highest bidder still remained undecided by the provincial board of Marinduque and by the Executive Bureau. The English translation of the letter sent by the municipal president to Miguel Marasigan, which was written in Tagalog (Exhibit 8), reads:

"Sir:

"In view of the fact that the whitefish (bangus) case has not yet been decided or determined by the provincial board and is still pending action to date, and in view of the instructions given me by the representative of the Executive Bureau, Mr. Jose Zaguirre, I beg to inform you, with due respect, that you should refrain from carrying out and giving efficacy to the contract signed by me in the name of the municipality, relative to the privilege of gathering whitefish in your favor, from this date until further notice, because this case is still pending action."

Knowing the above-stated facts, let us now turn to the consideration of the alleged errors attributed to the lower court by the appellants.

The first and third errors should be considered jointly on account of the close relation existing between them. The determination of one depends upon that of the other.

This court believes that there is no necessity of even discussing the first error because the plaintiff itself accepted the conclusions and decision of the provincial board and of the Executive Bureau, so much so that in its resolution No. 11, series of 1931, it thereafter considered Graciano Napa as the highest bidder, going to the extent of requiring him, as it in fact required him, to make the deposit of P500 prescribed by the conditions of the auction sale in which he had intervened, and granting him a period of seven days to comply with said requirement (Exhibits 19 and 19-A). Furthermore, when the plaintiff received Graciano Napa's notice informing it that he ceded the privilege just granted him to appellant Miguel Marasigan or to any other person that it might choose, said plaintiff, through its municipal president, required Miguel Marasigan to appear before its municipal council to present his formerly prepared contract as well as his bond in order that both

documents might be ratified (Exhibit 21). It should be added to the foregoing that on December 18, 1930, the plaintiff, also through its municipal president, notified appellant Marasigan that his contract should, in the meantime, be considered ineffectual and that he should do nothing to put it in execution because the case was still undecided by the provincial board and by the Executive Bureau (Exhibit 8). It is clear that it may be logically inferred from these facts that the contract regarding fishing privilege entered into between the plaintiff and appellant Marasigan on December 11, 1930 (Exhibit A), not only was not consummated but was cancelled. Consequently, it now appears useless and futile to discuss whether or not resolution No. 161 (Exhibit 1) is valid and legal. In either case, it is a fact that said contract ceased to have life or force to bind each of the contracting parties. It ceased to be valid from the time it was cancelled and this being so, neither the appellant Marasigan nor his sureties or the other appellants were bound to comply, with the terms of their respective contracts of fishing privilege and suretyship. This is so, particularly with respect to the sureties-appellants, because suretyship cannot exist without a valid obligation (art. 1824 of the Civil Code). The obligation whose compliance by the appellant Marasigan was guaranteed by the sureties-appellants, was exclusively that appearing in Exhibit A, which should begin on January 1, 1931, not on the 14th of said month and year, and end on December 31st next. They intervened in no other subsequent contract which the plaintiff and Miguel Marasigan might have entered into on or after January 14, 1931. Guaranty is not presumed; it must be express and cannot be extended beyond its specified limits (art. 1827 of the Civil Code). Therefore, after eliminating the obligation for which said sureties-appellants desired to answer with their bond, the bond necessarily ceased and it ceases to have effects. Consequently, said errors I and III are true and well founded.

As to the second error, it must be known that among the stipulations contained in the stipulation of facts submitted to the court are the following:

"21. That on July 20, 1931, Miguel Marasigan paid the sum of P16.20 to the municipal treasurer of Gasan, as internal revenue tax on sales of whitefish (bangus) spawn amounting to P1,080 during the months of April, May and June, 1931; and that on August 22, 1931, said Miguel Marasigan presented his sales book to the municipal treasurer of Gasan, Mr. Gregorio D. Chavez, it appearing therein that said Miguel Marasigan, in the month of July, 1931, sold whitefish spawn amounting to P85; in the month of August, 1931, none, and in the month of September, 1931, none.

"22. That Miguel Marasigan is the concessionaire of the privilege to gather whitefish spawn in the jurisdictional waters of the municipality of Boac, Marinduque, during the period from January 1, 1931, to December 31 of said year, and that during said period of time he had paid the sales tax on the whitefish spawn in question only in the municipality of Gasan, without having made any payment in the municipality of Boac.

"23. That defendant Miguel Marasigan, as bidder at the auction of December 9, 1930, deposited in the municipal treasury of Gasan the sum of P420, equivalent to 10 per cent of his bid at said auction, and that said sum has not yet been returned to him to date.

"24. That on June 29, 1931, said Miguel Marasigan delivered another sum of P840 to the municipal treasurer of Gasan, making the total amount delivered by him to said municipal treasurer 91,260, the corresponding receipt having been issued to Miguel Marasigan to that effect."

The facts resulting from the stipulations in question warrant and justify the inference that the appellant Miguel Marasigan practically enjoyed the privilege of gathering whitefish spawn in the jurisdictional waters of the municipality of Gasan, under the terms of the contract executed by him on December 11, 1930, but which was cancelled later by virtue of Graciano Napa's protest, at least from the month of April to the month of July, 1931, inclusive. If this were not true, he would not have paid, as he spontaneously paid to the municipal treasurer of Gasan, the following sums: P840 on June 29, 1931, and 916.20 on July 20 of said year, nor presented, as he in fact presented to said official for inspection, his sales book wherein it appears that his sales of whitefish spawn during the month of July of said year amounted to P85. The stipulation of facts, however, is silent as to whether or not he

enjoyed the privilege in question during the rest of the year. On the contrary, it states that he sold no whitefish spawn in August or September.

The excuse now offered by appellant Marasigan in his brief that the above-stated amounts were on account of license fees or taxes on the privilege of gathering whitefish spawn in the jurisdictional waters of Boac, obtained by him from said municipality, is not supported by the evidence. If the payments made by him were as he claims them to be, he would have so stated in the stipulation of facts. Not having done so and, furthermore, the practice generally observed being to pay an obligation in the municipality where the payment is due, the only conclusion possible is that said appellant made all such payments on account of the tacit contract entered into by him and the plaintiff after he had received the letter of January 15, 1931 (Exhibit 21), sent to him by said plaintiff through its municipal president. This conclusion is all the more logical because appellant Marasigan insisted in his answer, and still continues to insist in his brief, that the plaintiff is obliged to refund to him the amount of P1,260 which he claims to have paid to it, and which is no other than the amount of the two sums of P420 and P840 stated in the last two paragraphs of the above-stated stipulation of facts. If it were really true, as said appellant contends, that said sum of P840 was paid by him on account of his contract for privilege of gathering whitefish spawn, executed in his favor by the municipality of Boac, he would not have insisted in his answer, nor would he now insist in his brief, that said sum be refunded to him, because in the absence of evidence, to the contrary, it must be presumed that it was transmitted by the municipal treasurer of Gasan to that of Boac, inasmuch as, accepting his contention, he was obliged to pay something to the latter municipality by virtue of his alleged contract with it.

For the foregoing reasons, the conclusion of this court with respect to the second error attributed to the lower court by appellant Marasigan is that said error is without merit. The truth is that between him and the plaintiff, there was a tacit contract for the privilege of gathering whitefish spawn in the jurisdictional waters of the municipality of Gasan, based upon Exhibit A, but without the intervention of the sureties-appellants, for the above-stated period, or from April to July, 1931, inclusive, which is equivalent to one and one-third quarter. Said contract was one which, by its nature, need not be in writing (sec. 335 of Act No. 190); but it is binding because it has all the essential requisites of a valid contract (art. 1278 of the Civil Code).

The fourth error is practically disposed of by the same reasons stated in passing upon the second error.

As to the fifth error, it must be stated that appellant Marasigan really deposited in the municipal treasury of Gasan, as stated in paragraph 23 of the stipulation of facts, the sum of P420 on account of his cancelled original contract (Exhibit A), and that said deposit has not as yet been returned to him. Therefore, he is entitled to be credited with said sum.

Summarizing all that has been stated heretofore, this court holds that appellant Miguel Marasigan owes and is bound to pay to the plaintiff municipality the proceeds of one and one-third quarter, for the privilege of gathering whitensh spawn enjoyed by him in 1931, at the rate of P4,200 a year, or P1,400 (P1,050 for one quarter and P for one-third of a quarter); but he is, in turn, entitled to be credited with the sum of P420 deposited by him on December 9, 1930, and P840 paid by him on June 29, 1931, or the total amount of P1,260. In other words, appellant Marasigan is bound to pay the sum of P140 to the plaintiff.

In view of the foregoing considerations, this court absolves the defendants-appellants Angel R. Sevilla and Gonzalo L. Luna from the complaint and orders the defendant-appellant Miguel Marasigan to pay the sum of P140 to the plaintiff municipality.

It is considered unnecessary to expressly mention appellant Miguel Marasigan's counterclaim because, as may be seen, he is credited in this judgment with the sum of 91,260 which is all that he claims therein, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, and Laurel, JJ., concur.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.