

6 Phil. 71

[ G.R. No. 2467. April 04, 1906 ]

**NICASIO MAG NO, PLAINTIFF AND APPELLANT, VS. MARIA BUGAYONG,  
DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**WILLARD, J.:**

Plaintiff, claiming that he had the exclusive right to fish in the fishery known as Pampano, in the pueblo of Mangatarem, in the Province of Pangasinan, for the period from the 1st of July, 1901, to the 30th of September, 1901, and from the 1st of January, 1902, to the 31st of December of the same year, brought, this action against the defendant to recover damages caused by the interference of the defendant with the exclusive right of the plaintiff to the fishery. Judgment was entered in the court below for the defendant. A motion for a new trial was made, which was denied, and the plaintiff has brought the case here by bill of exceptions.

Each one of the parties to this suit obtained from the provincial treasurer of Pangasinan a license to fish in this fishery, Pampano, during the time from the 1st of July, 1901, to the 30th of September of the same year. No law has been called to our attention, and we have not been able to find any, which gave the provincial treasurer any authority to issue such licenses. The Municipal Code went into effect on the 31st of January, 1901. By virtue of the provisions of that code the management of fisheries belonging to the municipality was entrusted to the municipal council. Neither one of the parties obtained any license from the municipality for the time here in question in the year 1901. Consequently the plaintiff did not prove that he had the exclusive right to fish in this place during that period, and can recover no damages for any interference by the defendant.

Both parties were applicants for the license for the year 1902. The question was decided by lot, the lot falling to the plaintiff, and on July 28, 1902, he paid into the municipal treasury 600 pesos, and received from the municipality a license to fish in this fishery for the year

1902. The defendant does not claim to have had any license during that year. She also admits that, having had a license to use this fishery prior to July, 1901, she had established there an apparatus for catching fish, and that this apparatus remained there during the year 1902, but she claims that the judgment in her favor must be affirmed because the plaintiff did not prove that she had caught any fish in 1902, or that he had suffered any damage by reason of any act of hers, The evidence upon this point is conflicting, and we can not say that it preponderates against the decision of the court below.

The judgment of that court is accordingly affirmed, with the costs of this instance against the appellant. After the expiration of twenty days judgment will be entered accordingly and ten days thereafter the case returned to the lower court for proper action. So ordered.

*Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.*

*Johnson, J., did not sit in this case.*