168-D, Manila. La madre de George William dió su consentimiento a la adopción de su hijo por el solicitante, el cual, según las pruebas, está en condiciones económicas para educar y mantener al menor.

El Procurador General contiende que el solicitante no puede adoptar al menor porque el articulo 335 del Codigo Civil de Filipinas dispone que no pueden adoptar aquellos que tienen hijos legitimos. Dicho artículo dice así:

"ART. 335. The following cannot adopt:

"(1) Those who have legitimate, legitimated, acknowledged natural children, or natural children by legal fiction;

"(2) The guardian, with respect to the ward, before the final approval of his accounts;

"(3) A married person without the consent of the other spouse;

"(4) Non-resident aliens;

"(5) Resident aliens with whose government the Republic of the Philippines has broken diplomatic relations;

"(6) Any person who has been convicted of a crime involving moral turpitude, when the penalty imposed was six months' imprisonment or more."

El juez *a quo* funda su decisión en el artículo 338 del mismo Codigó que dispone:

"ART. 338. The following may be adopted:

"(1) The natural child, by the natural father or mother;

"(2) Other illegitimate children, by the father or mother;

"(3) A step-child, by the step-father or step-mother."

En apoyo de su interpretación, cita el informe de la Comisión de Codigos del tenor siguiente: "Adoption of a step-child by a step-father or step-mother is advisable for it eases up a strange situation." Este argumento es bueno si él o ella no tiene hijo legitimo; pero si tiene, la adapcion de un hijastro no suaviza las fricciones en la familia; la empeora por el contrario, porque el heredero forzoso no se sentiría feliz con la adopción de su hermanastro; quedaria perjudicado porque no gozaría de todo el cuidado y amor de su padre o madre, y su participación en la herencia, si la tuviere, quedaría mermada o reducida.

La adopción de George no puede, pues, mejorar las relaciones entre el hijo adoptivo y la hija legitima. La disposición del artículo 338 debe entenderse en el sentido de que se puede adoptar a un hijastro por un padrasto o por una madrasta si no existe impedimento alguno. Si el padrasto que adopta tiene un heredero forzoso, la adopción no puede producir paz y armonia en su familia, porque el hijo legitimo no puede ver con buenos ojos al hermanastro que, por haber sido adoptado, se convierte en su coheredero. La posibilidad de la adopcion de un hijastro depende de la no existencia de herederos legitimos del adoptante. Cuando la Comisión dijo en su informe que la adopcion de un hijastro suaviza las relaciones familiares, tenia en la mente el caso en que ningun hijo legitimo quedaria perjudicado con dicha adopción.

El artículo 174 del Codigó Civil español dispone: "Se prohibe la adopción: 1.o x x x. 2.o A los que tengan descendientes legítimos o legitimados. etc." Razón de esta disposición: "También prohibe el Codigó la adopción a los que tengan descendientes legítimos o legitimados, omitiendo a los hijos naturales reconocidos. Aquí puede tener aplicación el art. 29, que declara que 'el concebido se tiene pornacido para todos los efectos que le sean favorables'. El fundamento de esta prohibición es sencillo y evidente tratándose de los que consideran que la adopción tiene por fin proporcionar consuelo al que no tiene hijos, pero no para nosotros que no vemos en aquella obra de misericordia, aunque muy piadosa y loable, la base suficiente de una institución jurídica. Nosotros en contramos legitimada dicha prohibición, teniendo en cuenta los conflictos y diferencias que produciría la entrada del extraño adoptado en una sociedad familiar que cuenta ya con otros individuos a quienes prodigar los cuidados y atenciones a que el adoptado tendriá derecho." (2 Manresa 6.a Ed., 108.)

El articulo 766 del Codigo de Procidimiento Civil dispone así:

"De la adopción por un padrasto.—El habitante de las Islas Filipinas, marido de una mujer que tuviere un menor habido de matrimonio anterior, podrá solicitar del Juzgado de Primera Instancia de la provincia donde residiera, la autorización para adoptarlo y para cambiar su apellido, pero será necesario el consentimiento escrito de dicho menor, caso de que tuviere catorce años, y el de su madre si no padeciere de demencia o embriaguez incurables, sustituyéndole en el último caso el tutor legitimo, y si no lo hubiera, una persona discreta e idonea nombrada por el juzgado actuará como amigo del menor."

Esta ley es de origen americano; no prohibe expresamente la adopción de un hijastro por un padrasto que tiene hijo legítimo; al contrario, dispone que el padrasto puede solicitar la adopcion de un hijastro. El Codigo de Procedimiento Civil ha derogado el sistema de adopcion del Codigo Civil (In re adoption of Emiliano Guzman. 40 O. G., 2083), doctrina confirmada en Joaquin contra Navarro y Castro en Intestate Estate of the Spouses Angela Joaquin y Joaquin Navarro, 46 O. G. (Supp. 1), 155. Para cambiar esta disposición del Codigo de Procedimiento que tiene hijo legitimo, adopción que puede producir graves trastornos dentro de la familia que cree en la herencia forzosa, la Comisión de Codigós adoptó el artículo 174 del Código Civil español con ciertas enmiendas, que es hoy el artículo 335 del Código Civil de Filipinas.

El articulo 338 emplea la palabra *may;* dicha palabra puede interpretarse como imperativa, que impone un deber, o permisiva, que confiere discreción: su interpretación depende de la intención del legislador, intención que puede deducirse del conjunto de toda la ley (Asunto de Mario Guariña, 24 Jur. Fil., 38.) Si es obligatoria, entonces es redundante el artículo 335. Es injusto suponer que el legislador haya incluido en el Código una disposición inútil o dos disposiciones contrarias. Si una ley es susceptible de varias interpretaciones, el tribunal debe adoptar aquella en que no se contradigan sus varias disponsiciones sino que se complementen entre sí.

Declaramos que la palabra *may* esta usada en el sentido de que confiere discreción: permite, pero no obliga la adopción de un hijastro. Armonizando los artículos 335 y 338, el padrasto o la madrasta que no tienen hijo legítimo pueden adoptar a un hijastro; pero si tienen, no pueden hacerlo.

Como Herman Ball tiene una hija legítima, no puede adpotar a George William York, Jr.

Se revoca la decisión apelada.

Paras, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo, and *Labrador, J.J.,* conformes

VII

The People of the Philippines, Plaintiff-Appellee vs. Felipe A. Livara, Defendant-Appellant, G. R. No. L-6200, April 20, 1954; Bengzon, J.

CIVIL COURTS AND COURTS-MARTIAL; CONCURRENT JURISDICTION. — The civil courts and courts-martial have concurrent jurisdiction over offenses committed by a member of the Armed Forces in violation of military law and the public law. The first court to take cognizance of the case does so to the exclusion of the other (Grafton v. U. S., 11 Phil. 776; Valdes v. Lucero, 42 O. G. No. 112845).

CRIMINAL LAW; CONSTITUTIONALITY OF ARTICLE 217 OF THE REVISED PENAL CODE. — Article 217 of the Revised Penal Code which reads: "The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses," is not unconstitutional and the validity of that article was discussed and upheld in People v. Mingoa, L-5371, promulgated March 26, 1953, wherein this court through Mr. Justice Reyes declared: "there is no constitutional objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence."

Marcelino Lontok for appellant.
Solicitor General Pompeyo Diaz and *Solicitor Isidro C. Borromeo* for appellee.

DECISION

BENGZON, *J*:

After the corresponding trial in the Court of First Instance of Romblon, Felipe A. Livara, was found guilty of malversation of public funds and sentenced to imprisonment from four (4) years, two (2) months and one (1) day of *prison correcional* to ten (10) years of *prision mayor*, with perpetual special disqualification, to pay a fine of ₱5,000.00, to indemnify the government in the sum of ₱5,597.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment he appealed on time. Because he assailed the constitutionality of Article 217 of the Revised Penal Code, the *expediente* was forwarded to this Court.

Appellant was from January, 1947 to July 22, 1948, provincial disbursing officer of the Philippine Constabulary in Romblon. As finance and accountable officer, he took charge of paying the salaries and subsistence of the PC officers and enlisted men of that region. On July 22, 1948, he came to Manila carrying some money, and, having secured a Treasury Warrant from the finance officer at Camp Crame for more than ₱8,000.00, he cashed the same in the Finance Building at Taft Avenue. In November, 1948, an examination of his accounts was conducted by Major Emilio Baldia, Chief of the Cash Examination and Inspection Branch of the Finance Service, who found him with a net shortage of ₱9,597.00 unaccounted for. Major Baldia submitted a report of his findings to the Adjutant General of the PC. Days afterwards, a board of officers was created formally to investigate the appellant. That board found him accountable for ₱9,597.00, and recommended his prosecution before the civil courts for malversation of public funds. An information for the crime of malversation of public funds was consequently filed in the Court of First Instance of Romblon on September 10, 1949.

Major Emilio Baldia, testified in the Romblon court that sometime in November 6, 1948, he examined the accountability of Lieutenant Felipe A. Livara and found he had incurred a net shortage of ₱9,597.00; and that in answer to his question, appellant admitted his financial liability but asserted he had lost the money in Manila on his way to North Harbor to board a vessel for Romblon.

Capt. Teofilo V. Dayao, Zone Finance Officer, testified that in the month of August, 1948, he was dispatched to Romblon to pay the salaries and subsistence of the officers and enlisted men of the PC stationed in said province; that he inquired into the whereabouts of Lt. Livara but was informed that he had left for Manila on July 23, 1948, to submit for approval the disbursement he had made and get the return of the same from the PC headquarters; that finding the safe of the accused locked, he sealed it in the presence of Capt. Diaz and Lt. Tañedo and brought it to Manila where it was opened in the presence of eleven officers including the appellant; and that no cash was found in the safe.

Provincial Auditor Aproniano S. Celajes, last prosecution witness, declared that on July 16, 1948, he examined and verified the books of account and money accountability of the appellant and found a balance of ₱14,984.00, represented by cash of ₱6,330.10, actually found on hand and vouchers in the amount of ₱8,654.00.

The appellant Felipe A. Livara was the lone witness for the defense. He declared that on July 22, 1948, he came to Manila and submitted his abstract to the Auditor of the PC; that a treasury warrant was issued to him in the amount of more than ₱8,000.00; that he proceeded to the Finance Building at Taft Avenue and cashed the same; that while riding a public utility jeepney bound for the North Harbor to embark on the S. S. Elena for Romblon, he lost his *portfolio* containing the said money plus about ₱1000 more, and other public documents. He swore to having made efforts to recover the portfolio but the jeepney was nowhere to be found.

There is no doubt about the shortage. It constitutes prima facie evidence that the accused made personal use of the money, unless he gives a satisfactory explanation (Art. 217 Rev. Penal Code). His account of the loss of the portfolio was not believed by the board officers that investigated him, and by the court below. It is really an incredible story. With about ten thousand pesos in it, the portfolio could not have been forgotten for one moment by any passenger, especially a finance officer like the accused. The alleged loss was obviously a ruse to conceal his defalcations. As a matter of fact, even before the Manila trip he was already in the red, as shown by the testimonies of Lt. Bernabe Cadiz, commanding officer of the 83rd PC company and Lt. Damaso C. Quiao, adjutant, supply and finance officer, of Romblon.

If the portfolio had actually been lost as recounted by appellant, he would not be responsible for the money. Yet he admitted his liability, made efforts to pay it, even used for that purpose a false check payable to Colonel Selga of the Constabulary.

Counsel for the appellant contends that the Court of First Instance of Romblon had no jurisdiction over the case, arguing that the alleged crime of malversation of public funds occurred during the incumbency of the accused as an officer of the Philippine Constabulary. Such contention is without merit. The civil courts and courts-martial have concurrent jurisdiction over offenses committed by a member of the Armed Forces in violation of military law and the public law. The first court to take cognizance of the case does so to the exclusion of the other (Grafton v. U.S., 11 Phil. 776; Valdez v. Lucero, 42 O. G. No. 112845). The accused-appellant having been first tried and convicted of the crime by the Court of First Instance of Romblon he cannot now claim that the criminal action should have been brought before a court-martial.

The constitutionality of the last paragraph of Article 217 of the Revised Penal Code is likewise assailed. It reads:

> "The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses."

Defense counsel maintains the view that this provision is contrary to the constitutional directive that in criminal prosecutions the accused shall be presumed innocent until the contrary is proven.

This contention deserves no merit, inasmuch as the validity of the said article has already been discussed and upheld in People v. Mingoa, L-5371, promulgated March 26, 1953, wherein this court through Mr. Justice Reyes declared: "There is no constitutional objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence."

WHEREFORE, as this appellant is guilty of malversation of public funds and as the penalty imposed on him accords with the law, we hereby affirm the judgment with costs against him. So ordered.

Paras, Pablo, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion and *Diokno, J.J.*, concur.

VIII

Santiago Ng, Petitioner-Appellant, vs. Republic of the Philippines, Oppositor-Appellee, G.R. No. L-5253, February 22, 1954, Jugo, J.

1. NATURALIZATION; FULL COMPLIANCE WITH STATUTORY PROVISION BY APPLICANT NECESSARY.—It is not within the courts to make bargains with applicants for naturalization. The courts have no choice but to require that there be full compliance with the statutory provisions. (2 Am. Jur., 577).

2. IBID; IBID.—An alien who seeks political rights as a member of this nation can rightfully obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect a matter so vital to the public welfare. (U.S. vs. Ginsberg, 243 U.S., 472; 61 L. ed. 853; 856).

Panfilo M. Manguera for appellant.
Solicitor General Juan R. Liwag and *Solicitor Isidro C. Borromeo* for appellee.

DECISION

JUGO, *J.*:

On October 25, 1949, Santiago Ng filed with the Court of First Instance of Marinduque a petition praying for his naturalization as a Filipino citizen.

The petition was accompanied by the affidavit of Jose Madrigal, Municipal Mayor of Boac, Marinduque, and the affidavit of Filemon Ignacio, Chief of Police of the same municipality, together with two pictures of the petitioner. However, the petition was not accompanied by the declaration of intention to apply for Philippine citizenship presented one year prior to the filing of the petition.

The notice of hearing of the petition had been posted in a conspicuous place in the Capitol Building of Marinduque and published in the newspaper "Nueva Era," a newspaper of general circulation in said province, on October 31, November 7, and 14, 1949, and in the Official Gazette in October, November and December, 1949.

The petition was called for hearing on September 8, 1950, at 9:10 a.m. No opposition was filed, except that of the Provincial Fiscal, which was presented on September 13, 1950.

At the hearing it was established that the petitioner was born on May 28, 1927, at Boac, Marinduque, Philippines, his father being Ng Kin and his mother Ching Kiat, who are still living, both citizens of the Republic of China, the petitioner, therefore, being also a citizen of said country; that the petitioner was 22 years old, single, native and resident of the municipality of Boac, Marinduque, where he had been residing continuously from the time of his birth up to the date of the hearing; that he is of good moral character and believes in the principles underlying the Philippine Constitution; that during his residence he had conducted himself in a proper and irreproachable manner both in his relations with the constituted authorities as well as with the people in the community with whom he mingled; that he has a lucrative and lawful occupation as a trained mechanic; and that he is able to read and write English and Tagalog. He has no children. He has completed the primary and elementary courses and the first and second year high school. After he finished the second year high school he stopped and entered the vocational school known as the National Radio School and Institute of Technology in Manila, Philippines, which is duly recognized by the Philippine Government. He graduated from said school on May 23, 1948, obtaining a diploma.

The court of first instance of Marinduque denied his petition on the ground that he had not made a declaration of intention to become a Filipino citizen one year before he filed his petition.

The petitioner appealed from said decision, alleging that the trial court erred in not exempting him from the requirement of making his declaration of intention to become a Filipino citizen one year before the filing of his petition by virtue of Section 6 of the Naturalization Law, as amended, which, among other things, provides as follows:

> *"Persons exempt from requirement to make a declaration of intention.*—Persons born in the Philippines and have received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality, and those who have resided continuously in the Philippines for a period of thirty years or more before filing their application, may be naturalized without having to make a declaration of intention upon complying with the other requirements of this Act. x x x".

It is clear that he has not resided for thirty years in the Philippines. He has finished only the second year of high school.

The question is whether the course that he took in the National Radio School and Institute of Technology is equivalent to the third and fourth year high school. The court below on this point said:

> "1—The subjects given in the High School course are entirely different from those given in the vocational school; cultural training is emphasized in the first while scientific and practical training in the second;
>
> "2—The number of unit hours required to finish the first and second year High School is much more than those required in finishing the vocational course.
>
> "The petitioner does not have sufficient knowledge of Philippine history, government and civics.
>
> "In view thereof, the Court has come to the conclusion that the vocational course cannot be the equivalent of the third, and fourth year High School course. In other words, the petitioner did not complete his secondary education as required by section 6 of the Revised Naturalizaiton Law for exemption from filing a declaration of intention to acquire Philippine citizenship one year before an alien may file a petition for the acquisition of Philippine citizenship by naturalization."

This Court, in the case of Jesus Uy Yap v. Republic of the Philippines, G. R. No. L-4270, held as follows:

> "Because of petitioner's failure to file his intention to become a citizen of the Philippines, we are constrained to deny his application for naturalization. It would seem rather unfair to do this because outside of his failure to file a declaration of intention, the applicant is clearly entitled to naturalization. According to the findings of the trial court, not impugned by the Government, the applicant was born and raised in the Philippines, resided continuously here up to the time he applied