was entitled only to the amount of ₱765.00 awarded to him as indemnity in the criminal case, and that for this reason, the Municipal Court had jurisdiction. We have already held in several decisions that what determines the jurisdiction of a court in civil cases is not the amount that plaintiff is entitled to recover under the allegations of the complaint and under the law but the amount sought to be recovered, usually contained in the prayer. In the recent case of Lim Bing It vs. Hon. Fidel Ibañez, et al., G. R. No. L-5216, March 16, 1953, also a case of certiorari but which we regarded as one for mandamus, wherein the petitioner therein filed an action in the court of First Instance of Manila to recover ₱4,526.30, exclusive of interest, itemized as follows: ₱326.30 for merchandise bought on credit; ₱2,000.00 for damages, and ₱2,200.00 as attorney's fees, and where the trial court pronounced itself as without jurisdiction on the ground that "the cause of action" was only for the amount of ₱326.30, we held that the amount which determines the jurisdiction of the courts of general jurisdiction is the amount sought to recovered and not the amount found after trial to be due; and as we found that the respondent Judge therein erred in holding that he had no jurisdiction, we granted the petition and directed him to decide the case.

Finding the present petitioner for certiorari which we regard as a petition for mandamus to be well-founded, the same is hereby granted, and setting aside the order of dismissal of respondent Judge, he is hereby directed to reinstate Civil Case No. 19557 and hear the same. No costs.

Jugo, Angelo, Labrador, and *Concepcion, J.J.,* concur.
Mr. Justice Padilla did not take part.

XIII

The People of the Philippines, Plaintiff-Appellee, vs. Aquino Mingao, Defendant-Appellant, G.R. No. L-5371, March 26, 1953, Reyes, J.

1. CRIMINAL LAW; CONSTITUTIONALITY OF ARTICLE 217 OF THE REVISED PENAL CODE.—The provisions of Article 217 of the Revised Penal Code create a presumption of guilt once certain facts are proved. It makes the failure of a public officer to have duly forthcoming, upon proper demand, any public funds or property with which he is chargeable *prima facie* evidence that he has put such missing funds or property to personal use. The ultimate fact presumed is that the officer has malversed the funds or property entrusted to his custody, and the presumption is made to arise from proof that he has received them and yet he has failed to have them forthcoming upon proper demand. Clearly, the fact presumed is but a natural inference from the fact proved, so that it cannot be said that there is no rational connection between the two. Furthermore, the statute establishes only a *prima facie* presumption, thus giving the accused an opportunity to present evidence to rebut it. The presumption is reasonable and will stand the test of validity laid down in the above citations.

2. IBID; IBID;.—The validity of statutes establishing presumptions in criminal cases is now a settled matter. Cooley, in his work on constitutional limitations, 8th ed., Vol. I, pp. 639-641, says that "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." In line with this view, it is generally held in the United States that the legislature may enact that when certain facts have been proved they shall be *prima facie* evidence of the existence of the guilt of the accused and shift the burden of proof provided there be a rational connection between the facts proved and the ultimate fact presumed so that the inference of the one from proof of the others is not unreasonable and arbitrary because of lack of connection between the two in common experience. (See annotation on constitutionality of statutes or ordinances making one fact presumptive or *prima facie* evidence of another, 162 A. L. R. 495-535; also, State v. Brown, 182 S. E. 838, without reference to embezzlement.) The same view has been adopted here as may be seen from the decision of this Court in U.S. v. Tria, 17 Phil. 303; U.S. v. Luling, 34 Phil. 725; and People v. Merilo, G.R. No. L-3489, promulgated June 28, 1951)

Marcelino Lontok for appellant.
First Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Federico V. Sian* for appellee.

DECISION

REYES, *J.*:

Found short in his accounts as officer-in-charge of the office of the municipal treasurer of Despujols, Romblon, and unable to produce the missing fund amounting to ₱3,938.00 upon demand by the provincial auditor, the defendant Aquino Mingoa was prosecuted for the crime of malversation of public funds in the Court of First Instance of Romblon, and having been found guilty as charged and sentenced to the corresponding penalty, he appealed to the Court of Appeals. But that court certified the case here on the ground that it involved a constitutional question.

The evidence shows and it is not disputed that upon examination of his books and accounts on September 1, 1949, defendant, as an accountable officer, was found short in the sum above named and that, required to produce the missing fund, he was not able to do so. He explained to the examining officer that some days before he had, by mistake, put the money in a large envelope which he took with him to a show and that he forgot it on his seat and it was not there anymore when he returned. But he did not testify in court and presented no evidence in his favor.

We agree with the trial judge that defendant's explanation is inherently unbelievable and cannot overcome the presumption of guilt arising from his inability to produce the fund which was found missing. As His Honor observes, if the money was really lost without defendant's fault, the most natural thing for him to do would be to so inform his superiors and apply for release from liability. But this he did not do. Instead, he tried to borrow to cover the shortage. And on the flimsy excuse that he preferred to do his own sleuthing, he even did not report the loss to the police. Considering further, as the prosecution points out in its brief, that defendant had at first tried to avoid meeting the auditor who wanted to examine his accounts, and that for sometime before the alleged loss many teachers and other employees of the town had not been paid their salaries, there is good ground to believe that defendant had really malversed the fund in question and that his story about its loss was pure invention.

It is now contended, however, that lacking direct evidence of actual misappropriation the trial court convicted defendant on mere presumptions, that is, presumption of criminal intent in losing the money under the circumstances alleged and presumption of guilt from the mere fact that he failed, upon demand, to produce the sum lacking. The criticism as to the first presumption is irrelevant, for the fact is that the trial court did not believe defendant's explanation that the money was lost, considering it a mere cloak to cover actual misappropriation. That is why the court said that

"whether or not the (defendant) is guilty of malversation for negligence is of no moment x x x." And as to the other presumption, the same is authorized by article 217 of the Revised Penal Code, which provides:

> "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 use."

The contention that this legal provision violates the constitutional right of the accused to be presumed innocent until the contrary is proved cannot be sustained. The question of the constitutionality of the statute not having been raised in the court below, it may not be considered for the first time on appeal. (Robb vs. People, 68 Phil. 320).

In any event, the validity of statutes establishing presumptions in criminal cases is now a settled matter. Cooley, in his work on constitutional limitations, 8th ed., Vol. I, pp. 639-641, says that "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." In line with this view, it is generally held in the United States that the legislature may enact that when certain facts have been proved they shall be *prima facie* evidence of the existence of the guilt of the accused and shift the burden of proof provided there be a rational connection between the facts proved and the ultimate fact presumed so that the inference of the one from proof of the others is not unreasonable and arbitrary because of lack of connection between the two in common experience. (See annotation on constitutionality of statutes or ordinances making one fact presumptive or *prima facie* evidence of another, 162 A. L. R. 495-535; also, State v. Brown, 182 S E. 838, with reference to embezzlement.) The same view has been adopted here as may be seen from the decisions of this Court in U.S. v. Tria, 17 Phil. 303; U.S. v. Luling, 34 Phil. 725; and Pople v. Merilo, G.R. No. L-3489, promulgated June 28, 1951.

The statute in the present case creates a presumption of guilt once certain facts are proved. 'It makes the failure of a public officer to have duly forthcoming, upon proper demand, any public funds or property with which he is chargeable *prima facie* evidence that he has put such missing funds or property to personal use. The ultimate fact presumed is that the officer has malversed the funds or property entrusted to his custody, and the presumption is made to arise from proof that he has received them and yet he has failed to have them forthcoming upon proper demand. Clearly, the fact presumed is but a natural inference from the fact proved, so that it cannot be said that there is no rational connection between the two. Furthermore, the statute establishes only a *prima facie* presumption, thus giving the accused an opportunity to present evidence to rebut it. The presumption is reasonable and will stand the test of validity laid down in the above citations.

There being no reversible error in the decision appealed from, the same is hereby affirmed, with costs.

Paras, Feria, Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, and *Labrador, J.J.,* concur.

XIV

Pedro Teodoro, Plaintiff-Appellee, vs. Agapito Balatbat, et al., Defendants-Appellee, G.R. No. L-6314 January 22, 1954, Reyes, J.

CIVIL PROCEDURE; ACTION FOR FORCIBLE ENTRY AND DETAINER IN A JUSTICE OF THE PEACE COURT; DEFENDANT'S ALLEGATION OF OWNERSHIP OF THE PROPERTY INVOLVED.—It has been held time and again that the defendants in a case of forcible entry and detainer in a justice of the peace court may not divest that court of its jurisdiction by merely claiming ownership of the property involved. It is, however, equally settled that if it appears during the trial that, by the nature of the proof presented, the question of possession can not properly be determined without settling that of ownership, then the jurisdiction of the court is lost and the action should be dismissed. So, where plaintiff's claim to possession is predicated upon a deed of sale alleged to have been executed by the defendant who in turn alleges said document to be fictitious and fraudulent, and there are no circumstances showing that this claim of defendant is unfounded, the justice of the peace loses its jurisdiction.

T. C. Martin and *A. B. Reyes* for appellants.
Jose B. Bautista for appellee.

DECISION

REYES, *J.*:

This is an appeal from the Court of First Instance of Bulacan certified to this Court by the Court of Appeals for the reason that it involves a purely legal question.

The case originated in the justice of the peace court of Hagonoy, Bulacan, with the filing of a complaint for the recovery of possession of two parcels of land and a house thereon which were allegedly leased by plaintiff to defendants and which the latter refused to vacate after the expiration of the lease despite demands. Answering the complaint, defendants denied the alleged lease, and setting up title in themselves, alleged that the house and land in question were merely mortgaged by them to plaintiff as a security for a usurious loan, but that to cover up the usury the transaction was given the form of a fictitious and simulated contract of sale with right of repurchase, which they consented to sign on the assurance that it was to be a mere evidence of indebtedness and would not be enforced as a true *pacto de retro* sale. After hearing the evidence presented by the parties, the justice of the peace rendered his decision dismissing the case for want of jurisdiction on the theory that the question of possession could not be resolved without first deciding that of ownership. From this decision plaintiff appealed to the Court of First Instance of Bulacan. There defendant filed a motion to dismiss, alleging that the court had no jurisdiction to try the case on the merits. But the motion was denied, whereupon, defendants filed their answer to the complaint and plaintiff, on his part, filed his reply to the answer. On the case coming up for hearing, defendants in open court again raised the question of jurisdiction. But the court rendered an order holding that the justice of the peace had jurisdiction and remanded the case to that court for trial on the merits. It is from that order that defendants have appealed.

It has been held time and again that the defendant in a case of forcible entry and detainer in a justice of the peace court may not divest that court of its jurisdiction by merely claiming ownership of the property involved. It is, however, equally settled that "if it appears during the trial that, by the nature of the proof presented, the question of possession can not properly be determined without settling that of ownership, then the jurisdiction of the court is lost and the action should be dismissed." (II Moran, Rules of Court, 1952 ed., p. 299, and cases therein cited.) So it is held that where plaintiff's claim to possession "is predicated upon a deed of sale alleged to have been executed by the defendant, who in turn alleges said document to be fictitious and fraudulent, and there are no circumstances showing that this claim of defendant is unfounded, the justice of the peace loses its jurisdiction." (Ibid.)

The evidence presented in the justice of the peace court in the