"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

present case is not before us. But from the answer filed by the defendants in the Court of First Instance and plaintiff's reply thereto, it is evident that plaintiff's pretended right to the possession of the property in dispute ultimately rests upon his claim of ownership, a claim based upon a purported contract of sale with right of repurchase admittedly signed by defendants but claimed by them to be a mere simulation to cloak a mortgage obligation tainted with usury. If this contract was really a sale subject to repurchase and the repurchase has, as alleged by the plaintiff, not been made within the time stipulated, plaintiff would already be the owner of the property sold and, as such, entitled to its possession. On the other hand, if the contract was, as defendants claim, in reality a mere mortgage, then the defendants would still be the owner of the property and could not, therefore, be regarded as mere lessees. In the final analysis then, the case hinges on a question of ownership and is for that reason not cognizable by the justice of the peace court.

The case at bar is to be distinguished from that of Sevilla vs. Tolentino, 51 Phil. 333, cited by the learned trial judge in the order appealed from. In that case, defendant was deemed to have impliedly admitted being lessee of the property in dispute and could not for that reason be allowed to claim ownership thereof in the same action. Such is not the situation of the present defendants, who have in their answer denied the alleged lease.

As the justice of the peace court of Hagonoy had no jurisdiction to try the case on the merits, the order appealed from remanding the case to that court must be, as it is hereby, revoked; and, in accord with the precedent established in Cruz et al. vs. Garcia et al., 45 O.G. 227, and the decisions therein cited, the case is ordered returned to the Court of First Instance of Bulacan for that court to proceed with the trial in the exercise of its original jurisdictoin. With costs against the appellee.

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

XV

The People of the Philippines, Plaintiff-Appellant, vs. Ricardo Catchero, Defendant-Appellee, G.R. No. L-6084, *promulgated December* 17, 1953, *Reyes, J.*

CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS; EXEMPTION FROM CRIMINAL LIABILITY.—The information alleges that defendant had possession, custody and control of the prohibited articles without the required license. But because it does not allege that defendant made use of them except for self-defense or carried them on his person except for the purpose of surrendering them to the authorities, the lower court found it insufficient in view of our ruling in People vs. Santos Lopez y Jacinto, G.R. No. L-1062 (promulgated November 29, 1947), which was re-affirmed in People vs. Ricardo Aquino y Abalos, G.R. No. L-1429 (promulgated May 16, 1949). The ruling cited is applicable only to violations of the firearm law committed before the expiration of the period fixed in Proclamation No. 1, dated July 20, 1946, for surrendering unlicensed firearms and ammunition, when mere possession of those articles did not make the possessor criminally liable unless he was found making use of them except in self-defense or carrying them on his person except for the purpose of surrendering them.

First Assistant Solicito. General Ruperto Kapunan, Jr. and *Solicitor Jose G. Bautista* for appellant.

No appearance for appellee.

DECISION

REYES, J.:

This is an appeal from an order of the Court of First Instance of Pangasinan, dismissing an information for illegal possession of firearm and ammunition. The dismissal was ordered on a motion to quash on the grounds that the information did not state facts sufficient to constitute an offense.

The information alleges that defendant had possession, custody and control of the prohibited articles without the required license. But because it does not allege that defendant made use of them except for self-defense or carried them on his person except for the purpose of surrendering them to the authorities, the lower court found it insufficient in view of our ruling in People vs. Santos Lopez y Jacinto, G.R. No. L-1062 (promulgated November 29, 1947), which was re-affirmed in People vs. Ricardo Aquino y Abalos, G.R. No. L-1429 (promulgated May 16, 1949).

The ruling cited is applicable only to violations of the firearm law committed before the expiration of the period fixed in Proclamation No. 1, dated July 20, 1946, for surrendering unlicensed firearms and ammunition, when mere possession of these articles did not make the possessor criminally liable unless he was found making use of them except in self-defense or carrying them on his person except for the purpose of surrendering them. This is what we held in case of People vs. Morpus Felinggon, G.R. No. L-3460, promulgated December 29, 1950, from which the following may be quoted:

> "We are of the opinion that the Santos Lopez case does not apply. Therein the possession of firearms and ammunition occured in August 21, 1946; whereas Morpus' possession was alleged to be on September 15, 1949. *Distingue tempora et condordabis jura.* Distinguish time and you will harmonize laws. Up to August 31, 1946—by reason of Section 2 of Republic Act No. 4 and the proclamation of the President — 'criminal liability for mere possession of firearms and ammunition' was in effect 'temporarily lifted' or suspended. Wherefore Santos Lopez' *mere possession* before August 31, 1946 was not punishable. That was our holding in the Santos-Lopez decision. However, on August 31, 1946 the suspension terminated; and thereafter the general rule making it unlawful to manufacture, sell, possess, etc., firearms and ammunition again prevailed. Consequently the herein appellee having been allegedly found in possession of firearms after August 31, 1946 (more specifically on September 15, 1949) be transgressed the law on the matter, unless he proved some valid defense or exculpation."

As the violation charged in the present case is alleged to have be committed on or about August 16, 1949, which was after the deadline (August 31, 1946) fixed for the surrender of unlicensed firearms and ammunition, the ruling applicable is that laid down in the case last cited.

Wherefore, the order appealed from is revoked and the case ordered remanded to the court below for further proceedings.

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

XVI

The People of the Philippines, PlaintiffA-ppellee, vs. Leon Aquino, Defendant-Appellant, G.R. No. L-6063, *April* 26, 1954, *Reyes, J.*

1. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; FUNDS IMPRESSED WITH THE CHARACTER OF "PUBLIC FUNDS".—Even supposing that funds belonging to the NARIC are not public funds, they become impressed with that