poration equally filed a motion to dismiss on the ground of lack of sufficient cause of action and prescription. And, the Rehabilitation Finance Corporation also filed a motion on the ground of lack of sufficient cause of action. Acting upon these pleadings the trial court presided over by Judge Gatmaitan issued an order dated January 20, 1951 dismissing the complaint. We reproduce said order.

"Considering the motion to dismiss filed by Lorenzo T. Ona, the Hacarin Dairy Farm and the RFC, the Court finds that all these motions are well founded. If the action can be considered as an action to recover the property described in the original of Transfer Certificate of Title No. 12463 of Bulacan, it is the Bulacan Court that has jurisdiction; if, on the other hand, it should be considered as an action to rescind the contract on the ground of failure to pay the balance of the purchase price, considering that according to paragraph 2 of the complaint, the period within which to pay the balance of the purchase price expired in April, 1931, the cause of action accrued since then; and as the complaint was filed only on December 23, 1950, a period of more than eighteen (18) years had elapsed from the date when the cause of action accrued to the date when the complaint was filed; in that case, it is clear that the same is already barred by prescription; under Rule 8, Section 1, v subpar. e, prescription may be availed of in a motion to dismiss. Even assuming that the Court has venue over the case, and that the action is to recover real property as from the allegations of the complaint, it is a case where plaintiff, according to him, was deprived of the ownership of the property since 1931; again it will appear that the action has prescribed since defendants got title in 1931. In fact, the complaint should be considered more of an action to recover the property rather than to a sum of money (Inton v. Quintana, L-1236, 26 May 1948; Baguioro v. Barrios, 43 O. G. 2031, August 30, 1946). There is even no showing that defendant Ona, Hacarin Dairy Farm and the RFC were purchasers in bad faith; even as to them, there can be no cause of action. The principal defendant Emilio Sanchez has not filed any motion to dismiss; but considering the tenor of his answer, he also raises the preliminary question that there is no cause for action; that the action has prescribed and that the Court has no jurisdiction over the case. From the view we have adopted as shown in the above discussion, it will appear even as against Emilio Sanchez, the action has prescribed. The result will be that the case shall be dismissed.

IN VIEW WHEREOF, complaint DISMISSMED, without costs.

SO ORDERED."

Plaintiff Gavieres first appealed from the above-quoted order to the Court of Appeals which tribunal after a study of the appeal indorsed the case to us on the ground that only questions of law were involved. After a careful study of the issues involved, we agree with the trial court in its order subject of the present appeal, specially as it holds that venue was improperly laid. In several decisions rendered by this Tribunal, as late as 1950, we have held that under Section 3, Rule 5 of the Rules of Court, an action affecting title to or recovery of possession of real property must be commenced and tried in the province where said property lies; that an action for the annulment or rescission of the sale of property does not operate to efface the fundamental and prime objective and nature of the action which is to recover said real property, and that under Rule 8, section 1 (b), a defendant may file a motion to dismiss the action when venue is improperly laid.[1]

There is no question that the present action should have been brought in the province of Bulacan where the land lies, and that in bringing the action in the province of Rizal, venue was improperly laid thereby justifying the order of dismissal. True, not all the defendants asked for dismissal on this ground but the purpose of their pleadings can well be interpreted as to attack venue. And as to prescription, as already said, there is every reason to believe and to find the dismissal to be well-founded on prescription, whether the action be considered as one to recover a sum of money or to recover real property.

In view of the foregoing, the order appealed from is hereby affirmed, with costs against appellant.

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

(1) Inton v. Quintana, G.R. No. L-1236, 45 O.G. No. 12, p. 5456; Enriquez v. Macadaeg, L-2422, 47 O.G. No. 3, p. 1208; Muñoz v. Llamas, G.R. No. L-2832, Dec. 21, 1950.

XII

Roman Tolsa, Petitioner, vs. Hon. Alejandro J. Panlilio, etc., et al., Respondents, G.R. No. L-7024, May 26, 1954, Montemayor, J.

COURTS; JURISDICTIONAL AMOUNT IN CIVIL CASES. —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.

M. S. del Prado for petitioner.
Filemon R. Enrile for respondents.

DECISION

MONTEMAYOR, *J.*:

As a result of the collision in the month of October, 1948, between a truck owned by respondent Atayde Brothers and Company driven by one Elpidio Bamba and a passenger bus owned by petitioner Roman Tolsa, BAMBA was prosecuted in the Court of First Instance of Manila in Criminal Case No. 8748 for damage to property thru reckless imprudence, was found guilty, and sentenced to pay a fine of ₱765.00, to indemnify Tolsa in the same amount, with subsidiary imprisonment in case of insolvency, and to pay the costs. On appeal the decision was affirmed by the Court of Appeals. Bamba failed to pay the two amounts and had to undergo the corresponding subsidiary imprisonment. Because of Bamba's insolvency and his failure to pay the indemnity Tolsa filed in the same Court of First Instance of Manila Civil Case No. 19557 against Atayde Brothers and Company and Elpidio Bamba to recover the amount of ₱2,013.00 consisting of the indemnity of ₱765.00, ₱98.00 as damage to one tire as a result of the collision, ₱950.00 as consequential damages which is the amount Tolsa was supposed to have failed to realize as income during the time that his bus was being repaired, and ₱200.00 as attorney's fees, or a total of ₱2,013.00. Defendants in said civil case answered the complaint and the court set the hearing of the case on August 20, 1953. However, on August 5th, that is, fifteen days before the date set for hearing, respondent Judge Panlilio *motu propio* dismissed the case, without prejudice, on the ground that the court was without jurisdiction to try the same for the reason that the amount sought to be recovered in the action was less then ₱2,000.00. A motion for reconsideration by plaintiff Tolsa was denied and so he filed the present petition for certiorari on the ground that despite the fact that respondent Judge had jurisdiction over the case, he acted in excess of his jurisdiction and with grave abuse of his discretion in dismissing it.

Although respondent Judge in his order of dismissal did not state the reason why he ruled that he had no jurisdiction over the case, we presume that he was of the belief that plaintiff Tolsa

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