

LAO TANG BUN (ALIAS VICENTE UY), NG BUN HO (ALIAS ONG CHI BEN) LU BON KING (ALIAS LEE), YAP LIM SUN (ALIAS PIA UY), AND GAN PING (ALIAS TANG ENG TIAN), PETITIONERS, VS. ENGRACIO...

G.R. No. L-1673. October 22, 1948

Ponente: BENGZON, J.

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BENGZON, J.:

Five Chinese citizens detained by our immigration authorities for purposes of deportation have instituted this proceeding to test the legality of their confinement and proposed expulsion from the Philippines. The use of habeas corpus to accomplish that objective is now a settled practice.[1]

It appears that, having received information that Tan Eng Tian, Pia Uy, Vicente Uy, Lu Bon King alias Lee and Ong Chi Ben, all Chinese nationals residing in this country, were communists actively engaged in communistic work and were disseminating red propaganda in addition to trafficking in firearms destined for subversive elements, the respondent Commissioner of Immigration issued warrant for their apprehension for investigation according to law with a view to deportation. The orders of arrest clearly expressed the reasons therefor, and were dated August 28, 1947.

The investigation commenced on September 1, 1947. After a thorough hearing, at which the arrested aliens were duly represented by attorneys, who cross-examined the witnesses and inspected all the documentary evidence against them, and were allowed to present testimonial and documentary proofs in their defense, the Board of Commissioners reached the unanimous conclusion that the detainees were really guilty as charged, and ordered that said Chinese (herein petitioners) "be immediately placed under custody in the Immigration Detention Station and that they be deported to Amoy, China, whence they came, on the first available boat bound for that port, in accordance with the provisions of the Philippine Immigration Act of 1940".

Basis of the banishment decree are the findings by the Commissioners:

"That the Batangas Chinese Elementary School in Batangas, Batangas, was founded in memory of Chua Kepsi, a Chinaman killed by the Japanese during the occupation; that the said school fell soon after its establishment under the control of Chinese Communists; that its first principal, named Yu Giok, was arrested in San Pablo City, Laguna, as a Communist; that respondent Lu Bon King alias Lee succeeded Yu Giok as principal of said school, while respondents Gan Ping alias Tan Eng Tian and Yap Lim Son alias Pia Uy with Lao Tang Bun alias Vicente Uy became the president and members, respectively, of the Board of Trustees of said school; that respondent Ng Bun Ho alias Ong Chi Ben has always been an active supporter of said school;

"That as early as 1946, these five respondents were taken to the MPC Headquarters in Batangas. Batangas, where they were investigated by Major Magallanes for communistic activities since they had been observed to be active Communists in Batangas, Batangas; that as the evidence then gathered by Major Magallanes was not complete in the sense that witnesses were not inclined to make affidavits, the five respondents were released; that upon directives received from the Office of the President which was furnished reliable information that these five respondents were actively engaged in communistic activities, the MPC of Batangas arrested them

and later on turned them over to the Bureau of Immigration to face the present deportation proceedings;

"That on March 30, 1946, these five respondents went to see Uy Teng Beng, a rich and prominent merchant in Batangas. Batangas, from whom they demanded the sum of P10,000 which was to be given to Luis Taruc of Pampanga to help his election to the Philippine Congress; that upon the refusal of said Uy Teng Beng to contribute the sum of P10,000 he was threatened with death by respondent Gan Ping alias Tan Eng Tian in the presence of the other four respondents;

"That these five respondents, about April or May, 1946, demanded from Lim Yu Ching, a Chinese resident in Batangas. Batangas, the sum of P100 to be given to the Hukbalahap; that Lim Yu Ching who was previously giving contributions to these respondents now refused to give the sum demanded, knowing that it would be used to aid the Communists in the Philippines; that because of this refusal, said Lim Yu Ching was threatened with death;

"That sometime in 1946, after the inauguration of the Republic of the Philippines, in one of the classrooms of the Batangas Chinese Elementary School, respondent Lu Bon King alias Lee drew the figure of the Russian flag on the blackboard and then told the audience that the Russian flag should be "up" while the flags of other nations should be "down"; that on July 7, 1946, in celebrating the anniversary of the outbreak of the Sino-Japanese war, respondent Gan Ping alias Tan Eng Tian delivered a fiery speech before the audience gathered in the Batangas Chinese Elementary School, advocating a revolution to change the Government of the Republic of the Philippines; that on the same occasion respondents Lu Bon King alias Lee and Yap Lim Sun alias Pia Uy also delivered speeches, while respondents, Lao Tung Bun alias Vicente Uy and Ng Bun Ho alias Ong Chi Ben and Gan Ping alias Tan Eng Tian were present as part of the audience; that in the Fifth Annual Convention held sometime in the latter part of 1945 in 30 Soler, Manila, by the Philippine Chinese Labor Union, a radical organization affiliated to Communism, respondents Ng Bun Ho alias Ong Chi Ben and Gan Ping alias Tan Eng Tian were present as shown by the group picture (Exhibit 'L') of all the persons who attended the said convention; that all the five respondents were always preaching the doctrine of Communism in the restaurant of Lim Yu Ching in Batangas, Batangas, urging those present to work for the change of the present Government into that of the Soviet form of government and at the same time severely attacking the present administration of the President of the Philippines;

"That respondent Gan Ping alias Tan Eng Tian. In February, 1947, hired the jeep of one Julian Luansing for P300 and transported thereon from Batangas, Batangas, to Angeles, Pampanga, nine (9) sacks of carbines which were delivered personally by him to the Huks at 11:30 in the evening; that in April, of the same year, respondent Gan Ping alias Tan Eng Tian, now with respondents Yap Lim Sun alias Pia Uy and Lao Tang Bun alias Vicente Uy, transported in a jeep hired for that purpose for P200 from Pablo Manalo three (3) sacks of carbines and ammunitions from Batangas, Batangas to Angeles, Pampanga, where they were delivered to some Chinese persons there;

"That on August 13, 1947, the Batangas Chinese Elementary School was raided by the MPC of Batangas and in the course of the raid many books and other papers were taken, some of which, upon being translated, were found to be of communistic leanings such as those referred to in the brief translation or synopsis made by the Consulate General of the Republic of China (Exhibit 'A-5'); and that the principal, respondent Lu Eon King alias Lee, the president of the Board of Trustees, respondent Gam Ping alias Tan Eng Tian, and the Members of said Board, Yap Lim Sun alias Pia Uy and Lao Tang Bun alias Vicente Uy, were fully aware of the character and contents of those books and papers;

"With regard to other material points established by the Government the solicitation of contributions undertaken by the respondents to help Luis Taruc and the Hukbalahaps, the supply of arms and ammunitions made by three of the respondents to the Huks in Angeles, Pampanga, the making of public speeches, urging a revolution to overthrow the present Government of the Republic of the Philippines and to establish the Soviet form of government, the distribution of leaflets printed in red favoring indirectly Communism, and committing

other subversive acts the respondents confined themselves to more denials of each. x x x x x x"

The pertinent legal provision is section 37 of Commonwealth Act No. 613 as amended by Republic Act No. 144. It reads in part as follows:

"(a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien;

"x x x

"(8) Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority, or who disbelieves in or is opposed to organized government, or who advises, advocates, or teaches the assault or assassination of public officials because of their Office, or who advises, advocates, or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines."

It is undisputed that every sovereign nation has the inherent power to exclude aliens from its territory or to deport them upon such grounds as it may deem proper for its self-preservation or public interest (cf. Borchard Diplomatic Protection of Citizens Abroad (1915). (48-49). In the exercise of such sovereign power the Philippine Legislature enumerated in above section 37 the reasons for which aliens are to be banished herefrom. At the same time it ordered that "no alien shall be deported without being informed of the specific grounds for deportation, nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration", Sec. 37(c), these requisites being undoubtedly the minimum requirements for compliance with the "due process clause" of the Constitution. (Japanese Immigrant Case 189 U. S. 86.)

It is of course well-settled that deportation proceedings do not constitute a criminal action. The order of deportation is not a punishment, (Mahler v. Eby 264 U. S. 32), it being merely the return to his country of an alien who has broken the conditions upon which he could continue to reside within our borders (U. S. v. De los Santos, 33 Phil., 397). The deportation proceedings are administrative in character, (Kessler v. Strecker 307 U. S. 22) summary in nature, and need not be conducted strictly in accordance with the ordinary court proceedings (Murdock v. Clark 53 F. (2d) 155). It is essential, however, that the warrant of arrest shall give the alien sufficient information about the charges against him, relating the facts relied upon. (U. S. v. Uhl 211 F. 628). It is also essential that he be given a fair hearing with the assistance of counsel, if he so desires, before unprejudiced investigators (Strench v. Pedaris 55 Fed. (2d) 597; Ex party Jew You On 16 F. (2d) 153). However, all the strict rules of evidence governing judicial controversies do not need to be observed; only such as are fundamental and essential, like the right of cross-examination. (U. S. v. Hughes 104 F. (2d) 14; Murdock v. Clark, 53 F. (2d) 155). Hearsay evidence may even be admitted, provided the alien is given the opportunity to explain or rebut it (Morrell v. Baker 270 F. 577; Sercherchi v. Ward 27 F. Supp. 437.)

The decision of the immigration authorities is final and may not be disturbed by the courts when the hearing was fair and no error of law was committed and there is evidence to support their conclusion (Kessler v. Strecker 307 U. S. 22-33). The courts will not weigh the conflicting evidence, determine the credibility of the witnesses or otherwise substitute their judgment for that of the immigration officers on the sufficiency of the proof. These matters are for decision by the immigration authorities and their findings will not be reversed if there is evidence to sustain them,[2] no matter if the courts might find differently from them on the whole evidence submitted. (Jung Sam. et al. v. Haff. 116 F. (2d) 334; U. S. ex rel Karpathiou v. Schlotfeldt, 106 F. (2d) 928).

Time and again this Supreme Court has announced the view that the decisions of the customs or immigration authorities are final, unless there has been an abuse of discretion or power, or where they have acted in open violation of the law. (*Bayani v. Insular Collector of Customs*, 37 Phil., 468) or there has been no fair hearing.

The record of the proceedings for deportation of herein petitioners had before the immigration officials is presented to us for examination. It is not complete: as pointed out by the Solicitor-Generals memorandum, several exhibits have not been attached. Nevertheless the main papers are here, and they sufficiently show: firstly, that herein petitioners were apprised, in the order for their apprehension, of the charges against them; secondly, that they had time to prepare for the investigation; thirdly, that they were ably represented by about four lawyers in said investigation who had ample opportunity to cross-examine the witnesses against their clients; fourthly, that no incident or circumstance is pointed out to indicate prejudice or unfairness on the part of the immigration commissioners; fifthly, that enough evidence was submitted to said commissioners to support their conclusion that herein petitioners were communists, propagated communism in the Philippines, advocated the overthrow of the present Government of the Philippines by revolution, and helped the Hukbalahaps, a rebellious organization.

It is this last point that petitioners vigorously assail, most of the pages of their voluminous printed memorandum having discussed the personal credibility of the witnesses for the Government, the extent and meaning of their assertions as contrasted or compared with those of the defense and the alleged erroneous admission of hearsay evidence to the prejudice of their interests. Yet we have already said herein before that, in these proceedings, hearsay evidence is not necessarily inadmissible. As to the credibility of the witnesses or the weight of the evidence we should not interfere, substituting our estimate of the situation for that of the Commissioners. Our concern in this instance is merely to see whether some evidence sustains their findings; and if so to keep off the judicial hands. The courts do not administer the immigration laws, they can only raise a staying hand if there has been abuse of power or legal error or the alien has not been given a fair hearing.

It appears from the testimonies of Lt. Armando Valdez and the Chinamen Lim Yu Ching and Uy Teng Beng that these detainees were the directors and managers of the Chinese Elementary School in Batangas, that communist meetings were held therein, that in its library were seized books and magazines propagating communism; that they further organized a so-called mutual protection association whose real purpose was to foster communism and "make trouble against the government"; that petitioner Tan Eng Tian has actually heard publicly to advocate revolution against the Philippine Government, and its overthrow, to be substituted by the Russian government; that the others were his followers who, like him are 11 communists, friends and supporters of Luis Taruc, avowedly a communist and presently up in arms against the Government.

The Solicitor-General, in his memorandum, calls attention to the fact that whereas the Government presented 39 exhibits, none of them have been submitted here by petitioners. He urges that under the circumstances this Court is not in a position accurately to determine whether respondents have committed abuse of discretion. There is merit to the contention. We note, for instance, that some witnesses, in testifying before the Commissioners identified and ratified certain affidavits they had previously sworn to, and these affidavits marked as exhibits, were subsequently introduced in evidence, without objection of the petitioners herein. (Exhibits C, D, E, and F). It is not far fetched to suppose that these affidavits covered points other than those touched upon in the testimony before us for revision, and contained the statements necessary to round out the allegedly inconclusive testimony of the Government witnesses. Could it be then that, knowing the supplementary or curatory effect of such exhibits the petitioners purposely refrained from presenting copies thereof? For instance, the testimony and credibility of Lim Yu Ching vigorously assailed by petitioners (pp. 20-21 of the memorandum) might be bettered with his affidavit which has not been presented.

Again we find petitioners strenuously arguing that there is no evidence to show that the firearms illegally

transported for them to Pampanga were delivered to the Hukbalahaps. Yet the witnesses who declared before the Commissioners about such transportation and delivery (Julian Luansing, Vicente Maala and Pablo Manalo) also had made affidavits (Exhibits D, E and F) which were submitted to the Commissioners without objection. These are not now available to us for revision. In the absence of the whole evidence can we validly say that there was no evidence on that particular point. It must be remembered that petitioner has the burden of proof to show, that the immigration authorities have abused their power or discretion (*Ong Liengco v. Collector of Customs*, 58 Phil., 556; *Tan Me Nio v. Collector of Customs*, 34 Phil., 944; *Flores Tan v. Collector of Customs*, 33 Phil., 205), and such showing must be made by the proceedings had before the immigration officials (*Ty Buan v. Collector of Customs*, 34 Phil., 937).

Counsel for petitioners devoted the major portion of their printed memorandum to a close scrutiny of the Government witnesses testimony calling attention to reportedly glaring discrepancies therein; and other features that impugn their credibility. Apparently they accomplished a thorough job. However, the trouble is that the order of deportation does not need to be justified by "preponderance of the evidence" nor by "evidence beyond reasonable doubt". It is not our duty to determine whether the calibration of the evidence made by respondents was accurate or not. It is enough that there is some evidence to support the order of deportation. (*Molden v. Collector of Customs*, 34 Phil., 497; *Chang Ka Hee v. Collector of Customs*, supra.)

The credibility of the witnesses or the weight of the evidence or preponderance thereof is not open to inquiry.

"The record shows that the board of special inquiry, which decreed and recommended the petitioner's deportation had investigated the case and received among other evidence the testimony of Si Kim Tee (alias Chua Ang Shi), justifying the action taken. There is no merit in the appellant's contention that the testimony of this witness should not have been given credence. Courts are not free to review the weight, admissibility, or sufficiency of evidence adduced before this board of special inquiry; and the decision of the Bureau of Customs, based upon evidence, is deemed conclusive. (*Tan Beko vs. Collector of Customs*, 26 Phil., 254; *Que Quay vs. Collector of Customs*, 33 Phil., 123; *Guevara vs. Collector of Customs*, 34 Phil., 394; *Molden vs. Collector of Customs*, 34 Phil., 493) (*Cheng Tao Liap vs. Collector of Customs*, 55 Phil., 895, 896.)

The sworn statements of Lt. Valdez and the other witnesses show the objectionable activities and preachings of these Chinese communists who advocate the overthrow of the present government by force and furnished arms to the rebellious elements. Such statements may not be as strong and as unimpeachable as could be, but they are there to support the order of deportation.

Wherefore, under the precedents applicable and in view of the incomplete record, we are not in a position to declare that the respondents did abuse their power in ordering the banishment of herein petitioners, who fall within section 37 (a) (b) of the Immigration Act hereinabove quoted.

The writ of habeas corpus is denied.

Moran, C. J., Ozaeta, Paras, Feria, and Pablo, JJ., concur.

[1] *Carmona vs. Aldanese*, 54 Phil., 896; *Uy Tana vs. Collector of Customs*, 55 Phil., 942; *Tan Ping Co vs. Collector of Customs*, 60 Phil., 542; *Ong Liengco vs. Collector of Customs*, 58 Phil., 554; *In re Dick*, 38 Phil., 41.

[2] *Ty Buan v. Collector of Customs*, 34 Phil., 937; *Chang Ka Hee v. Collector of Customs*, 56 Phil., 622.

DISSENTING

PERFECTO, J.:

Petitioners allege that they are unlawfully restrained of their liberties, confined in the Grace Park Hotel, Caloocan, and are about to be deported from this country; that the cause of their detention is the decision of the Board of Commissioners of the Bureau of Immigration issued on September 26, 1947, wherein petitioners were ordered to be deported in accordance with the Philippine Immigration Act No. 613 of 1940, supplemented by a warrant of deportation issued on the same day by respondent commissioners and committed to the deportation office of the Bureau of Immigration.

Petitioners allege that a grave abuse of discretion has been committed in ordering their deportation and confinement pending deportation, there being no sufficient evidence to warrant such decision, and that the provisions of Section 37 (a) paragraph 8 of the Immigration Act of 1940, invoked as authority for their deportation, is not applicable to the facts established.

Respondents, through the Solicitor General, filed an answer alleging that petitioners are Chinese nationals residing in the Philippines; that a warrant of arrest was issued by the Commissioner of Immigration against petitioners on the charge that they are Communists, actively engaged in communistic activities in the Philippines, and are disseminating papers, pamphlets, and magazines teaching communistic doctrines and beliefs; and trafficking in firearms destined for subversive elements; that after petitioners' arrest, the Board of Commissioners conducted an investigation during which petitioners were represented by their counsel and were given full opportunity to show their evidence and to cross-examine the witnesses presented against them; that the board unanimously found the charges to have been fully established and rendered a decision decreeing the detention and deportation of the petitioners; that, accordingly, the Commissioner of Immigration issued a warrant of deportation against them and, pending their deportation they are presently in the custody of the Commissioner who, under the provisions of Section 3 of the Immigration Act of 1940, Commonwealth Act No. 613, is charged with the duty of administering all the immigration laws; that at first petitioners were detained in the detention station of the Bureau of Immigration at Grace Park, but they were transferred to the city jail of Manila, where they are presently detained, on the information given to the commissioner of the suspicious conduct of some of petitioners and on the further confidential information given him by the G-2 of the MPC that the petitioners are intending to escape and join the Huks.

Respondents further allege that the judicial branch will not interfere in the administration of immigration laws by the executive branch of the government "unless it is conclusively shown that there has been an abuse of discretion or authority, or a violence of law." (*Ngo Ti vs. Shuster*, 7 Phil., 355 *Lo Po vs. McCoy*, 8 Phil., 343); that there is no abuse of discretion or violence of law when the findings are supported by some evidence or is justified by any principle of evidence, nor is it abuse of discretion or authority for the immigration officials to refuse to believe the witnesses or evidence presented by the alien. (*Loo Sin vs. Collector of Customs*, 27 Phil. 491; *Ty Buan vs. Collector of Customs*, 34 Phil. 937; *Chang Ka Hee vs. Collector of Customs*, 56 Phil. 622); that courts cannot review the weight or admissibility of evidence presented to the immigration officials (*Guevara vs. Collector of Customs*, 34 Phil. 397; *Molden vs. Collector of Customs*, 34 Phil. 493); that a determination of the question of fact by immigration authorities, in the absence of abuse of discretion, is not reviewable (*Uy Kai Hu vs. McCoy*, 24 Phil. 151); and that whether or not abuse of authority has been committed the question must be determined by the record of proceedings had before the immigration officials (*Ty Buan vs. Collector of Customs*, 34 Phil. 937).

Respondents objected to petitioners' prayer to be released on bail pending the determination of this habeas corpus case, alleging that said temporary release under section 37(e) of the Immigration Act of 1940, is discretionary on

the part of the Commissioner of Immigration; that the filing of the habeas corpus proceedings does not place them in the custody of this court (Collector of Customs vs. Harvey and Co Puy, 31 Phil. 503, 505), that the Commissioner of Immigration believes that it is not advisable to allow petitioners to be released on bail for the reason that there has been an experience that many immigrants or aliens released on bail abscond and fail to appear when they are needed to carry into effect any court or administrative order and that their apprehension have been found very difficult; that petitioners' release on bail will be detrimental to the peace, order and security of their country and will be a mockery to the machinery of law and justice; that the probability of petitioners jumping their bail is a potent reason for denying them their bail (People vs. Berg, L-1571).

Annexes 1 to 5 are attached to respondents answer. Annex 1 is the warrant of arrest issued by Commissioner of Immigration Engracio Fabre on August 28, 1947 on the ground that petitioners are communists actively engaged in communistic activity in the Philippines and are disseminating papers, pamphlets, and magazines teaching communistic doctrines and beliefs, and trafficking in firearms destined for subversive elements; Annex 2 is the decision rendered by the Board of Commissioners of Immigration on September 26, 1947, ordering the deportation of petitioners; Annex 3 is the warrant of deportation issued by Commissioner Fabre on September 26, 1947 Annex 4 is the urgent order for the transfer of petitioners from Grace Park to the city jail of Manila; and Annex 5 is the confidential information of the MP Command, dated September 18, 1947, to the effect that in rounds made in China town, Chinese informers disclosed a plan underway in local Chinese communist quarters whereby petitioners will be made to jump their bail and join the Huks in the mountain fastnesses in the event that the trial does not finish within their expectation.

The answer does not aver that petitioners are guilty of any one of the specific acts mentioned in paragraph 8 of Section 37(a) of C.A. 613.

The proceedings in the Bureau of Immigration under which petitioners are deprived of their personal freedom, are ordered, and are about, to be deported, were instituted under the provisions of Section 37(a) of the C.A. No. 613, specifically under paragraph 8 of said section. The pertinent and applicable legal provisions are quoted below:

"SEC. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board, of Commissioners of the existence of the ground for deportation as charged against the alien;

"(8) Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines, or of the constituted law and authority; or who disbelieves in or is opposed to organized government, or who advises, advocates, or teaches the assault or assassination of public officials because of their Office or who advises, advocates, or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating, or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise to the dissemination of such doctrines."

The legal controversy in this case revolves on the question whether, upon the evidence presented before the Board of Immigration Commissioners, there is any factual ground upon which petitioners, being aliens, are liable to be arrested and deported as provided by Section 37(a) under C.A. No. 613, also known as the Immigration Act of 1940.

The factual grounds provided by paragraph 8 of said Section 37(a) are, by subdividing the very text of said paragraph 8, as follows:

1. "Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines;

2. "Or of the constituted law and authority;
3. "Or who disbelieves or is opposed to organized government;
4. "Or who advises, advocates, or teaches the assault or assassination of public officials because of their office;
5. "Or who advises, advocates, or teaches the unlawful destruction of property;
6. "Or who is a member of or affiliated with any organization entertaining, advocating, or teaching such doctrines;
7. "Or in any manner whatsoever lends assistance, financial or otherwise to the dissemination of such doctrines."

In synthesis, advocacy or practice of anarchism, rebellion, sedition, or sabotage, are the acts which, under the law we are considering, constitute legal grounds for the arrest and deportation of aliens.

Is there evidence before the Board of Immigration Commissioners to the effect that petitioners have committed any of said acts? If the record of this case should give us an affirmative answer, petitioners are not entitled to any relief under the habeas corpus proceedings. If the answer is negative then they are being deprived of their personal liberty, illegally or without due process of law. As indeclinable consequence, their immediate release should be ordered.

To solve the juridical problem confronting us, our inquiry must be directed towards determining whether or not the record on our hand shows that the Board of Immigration Commissioners has received and is in possession of evidence in support of any of the factual grounds which, according to law, would authorize the arrest and deportation of petitioners.

Whether any written complaint was lodged against petitioners before any constituted authority is a question upon which the record falls to offer any enlightenment. There is evidence that the office of the President of to investigate petitioners for alleged communistic activities. Testimonies intended to show that some of the petitioners had been shown to entertain an opinion adverse to the administration of President Roxas is the only indication of the kind of the complaint that might have prompted the office of the President of the Philippines to order the investigation.

We were unsuccessful in our effort to get an answer to the question of how, upon criticism of the administration of President Roxas, any basis can be found for accusing petitioners of communistic activities. It is evident that petitioners are not accountable for any such criticism or for entertaining an adverse opinion on the administration of President Roxas. The guarantees of freedom of thought, of opinion, of expression, have been set by the Constitution for the benefit of every person, citizens and aliens alike, while there are officers of the government who entertain the opinion that profession of Communism or communistic activities are legal grounds for expelling aliens from our country.

The warrant of arrest issued against petitioners on August 28, 1947, Annex 1 of respondent's answer, states as ground that petitioners

"Are actively engaged in Communistic activities in the Philippines, and are disseminating papers, pamphlets, and magazines teaching communistic doctrines and beliefs; and trafficking in firearms destined for subversive elements."

Therein it is stated that the purpose for the apprehension of petitioners is

"For them to show cause, if any there be, why they should not be deported in accordance with law."

On its very face, the warrant of arrest appears to have been illegally issued. Not one of the specific factual grounds provided by paragraph 8 of Section 37(a) of C.A. No. 613 appears therein.

Communistic activities, or dissemination of papers, pamphlets, and magazines teaching communistic doctrines and beliefs, or trafficking in firearms are not included in any of the items of paragraph 8.

The nearest to the factual grounds provided by paragraph 8 is the statement that the trafficking of firearms is "destined for subversive elements." But the words "subversive elements" are of too general import to convey necessarily the anarchistic, rebellious, seditious or sabotaging, preaching all doctrines intended to be checked by the law. There are subversive elements in politics as in religion, in practical matters as in theory, in action as in thoughts, in philosophy as in social sciences, in pedagogy as in social conventions.

The glaring illegality of the warrant of arrest is aggravated by the avowed purpose of petitioners' apprehension, "for them to show cause, if any there be, why they should not be deported in accordance with law" because such avowed purpose throws on petitioners' shoulder the onus probandi as to their right not to be disturbed in their residence in this country, while Section 37(a) of C.A. No. 613 imposes upon the Board of Immigration Commissioners the duty of determining "the existence of the ground for deportation as charged against the alien."

The law contemplates, in the first place, that there should be a charge, a specific charge, against the alien intended to be arrested and deported, for any of the specific factual grounds mentioned in paragraph 8 and, secondly, that the charge must be determined, through competent evidence, by the Board of Immigration Commissioners. The onus probandi of the grounds for deportation rests on the complainant, and to shift it on the respondent aliens is to commit a glaring contravention of law.

In the decision of the Board of Immigration Commissioners, dated September 26, 1947 Annex 2 of respondents' answer, it is expressly stated that petitioners are:

"Charged before us under Section 37(a) of the Philippine Immigration Act of 1940, as amended, on the following grounds; That these respondents are Chinese nationals residing in the Philippines who are Communists, are actively engaged in communistic activities in the Philippines, and are disseminating papers, pamphlets, and magazines teaching communistic doctrines and beliefs; and trafficking in firearms destined for subversive elements."

The above-quoted charge does not tally with the factual grounds specified in paragraph 8 of Section 37(a) of C.A. No. 613.

The decision, in considering the evidence presented before it, sets the following premises:

"There is no question over the following points: That communism exists in the Philippines and all the respondents are Chinese nationals registered with the Bureau of Immigration under the Philippine Alien Registration Act of 1941. We take judicial notice of the fact that Communism has been outlawed in the Philippines and that force and violence are inseparable from communistic programs. (People vs. Evangelista, 57 Phil., 375). We also take judicial notice of the existence of the so-called Hukbalahap organization and of the fact that its members are defying the authority of the Philippine Government."

The pronouncement that Communism has been outlawed in the Philippines is wrong in fact and in law. There is absolutely no provision in our statute books outlawing Communism. As a matter of fact, no such provision has been pointed out by respondents or by the Solicitor General representing them.

The Solicitor General, in his memorandum of November 26, 1947, agrees with petitioners' counsel that "Nowhere in Section 37(a) paragraph 8 of the Philippine Immigration Act of 1940 is Communism specifically provided as ground for deportation."

The decision of the Supreme Court in *People vs. Evangelista*, 57 Phil. 375, invoked by respondents, is not a provision of law for outlawing Communism. The Supreme Court is not a legislature. At any rate, even in the false hypothesis that said decision can be given the force of a law, it had lost all its validity upon the subsequent enactment of C.A. No. 613. In the false hypothesis that, under the *Evangelista* decision, an alien could be deported for advocating Communism, after the enactment of C.A. No. 613, it had ceased to be a legal ground for such deportation.

The pronouncement in Annex 2 that "force and violence are inseparable from communistic programs" and the statement in the memorandum of the Solicitor General to the effect that the evidence presented before the Board of Commissioners of Immigration "show that Communism in this country does advocate the use of force and violence to carry out their plan of government reform," must be examined in the light of the recorded evidence, which we will soon consider.

It is also important to bear in mind the general attitude of our government towards Communism. Everybody ought to know that our government is dealing in amity with Russia, whose government is the outstanding advocate of Communism in the whole world. Our Republic is a member of the United Nations Organization, where Russia is one of the five dominating nations. Official representatives of our country are sitting shoulder to shoulder with Russian communist officials in commissions and committees of the United Nations Organization.

Russian communist officials were received by our government as guests and were given facilities to attend the ECAFE, one of the United Nations Commission which held sessions in Baguio. As a matter of fact, the Communist Russian representative had often been in the headlines by his obstructionist tactics in the Baguio deliberations. If aliens should be arrested and deported under our laws, because they are communists or advocating Communism, it is incomprehensible how the Russian communists were allowed to attend the above mentioned sessions and when they were in Baguio and in Manila, they are not arrested and deported, as they should have been, if respondents theory is based on truth. The fact that they are citizens of one of the most powerful nations of the world, at least, more powerful than the Republic of China, petitioners' nation, is a poor reason in support of an inconsistent attitude.

Let us now consider the evidence presented before the Board of Commissioners of Immigration.

Exhibit B is a copy of the transcript of the investigation had before the Board of Commissioners. From it is the following substance of testimonies:

1. Armando Valdes, 28, married, lieutenant in the MPC, Batangas, as investigator and intelligence officer, testified that he came to know petitioners as suspected of communistic activities since 1946, but there was no sufficient evidence against them until June, 1947, when the witness received another communication from the headquarters and from the office of the President of the Philippines requesting him to conduct another investigation against the five Chinese. Accordingly, the witness made an investigation and submitted a written report (2 and 3) on August 13, 1947, to the effect that we raided the Chinese Elementary School in Batangas, Magazines written in Chinese, of communistic leanings and propaganda, according to Chinese informers, were taken and turned over to the interpreter for proper examination. During the raid, the witness met petitioner Lee, the principal of the school. (4) In the investigation, Tan Eng Tian, one of petitioners, admitted being the board chairman of the school and "denied having anything to do with communism or ever engaged in communism." (5) The books and pamphlets taken were placed in book cases in the library of the school. Lim Yu Ching and Uy Teng Beng told the witness about communist meetings held in 1946, and they were communist because "they were against a democratic form of government," such as "lambasting President Roxas' administration." (8). Uy Teng Beng informed that at the meetings it was said that President Roxas was not a good President. (9) The

witness interviewed Julian Luangsing, Vicente Maala and Pablo Manalo who told him that they were buying firearms and ammunitions and taking them to Angeles. According to Maala, sometime in February, 1947, Tan Eng Tian asked him if he could help him get a vehicle for Angeles, Maala contacted Luangsing who agreed to get a vehicle to bring Tan Eng Tian to Angeles for the amount of P300. One day, Tan Eng Tian was picked up at the railroad crossing at calle Canto, Batangas, and according to Maala, there were hidden in the bushes nine sacks which were loaded in the jeep with Tan Eng Tian, Maala and Luangsing. According to Maala, when they arrived at Angeles, they stopped in front of a big barn where Tan Eng Tian was met by three Filipinos. But no action was taken against Maala or Luangsing "because we cannot see the firearms." (10). The witness did not see any activity of petitioners pertaining to Communistic matters. (11).

The witness knows Lee as the Chairman of the Board of Trustees of the School and the other petitioners as members, but it is possible that there are other members and he has heard that there are honorary members. In 1946, he went to the school twice and he saw the building packed with Chinese. Somebody was talking and talking in Chinese, which he did not understand, and some Chinese told him that the speeches were communistic. (12). The first meeting was attended by about two hundred persons. It took place in the morning. In the second meeting about the same member were present. In one meeting he saw Tan Eng Tian. (13). The witness did not investigate personally the five petitioners. All the petitioners are residents of Batangas. Ong Chi Ben owns a store inside the market, Pia Uy owns a grocery. One of them is a barber. (14). In the course of his investigation, the witness did not attempt to find out to what Chinese organization petitioners belong. He thinks that they are connected with the Huks. He was told about that matter by Lim Yu Ching. The witness cannot, tell who among the petitioners went to invite Lim Yu Ching to join a communist organization. According to Lim Yu Ching, since they are friends he Joined the organization by paying a contribution of P10. The following month he was asked for P100 as a contribution to the Huks. The school is known as the Chinese Elementary School. (15). Lim Yu Ching told the witness that the P10.00, which was asked from him by the Chinese were for the Huks. The witness heard that a man by the name of Kepsi was killed by the Japanese during the occupation and he heard that it is in his memory that petitioners maintain the spirit of the school. Although he was informed that communistic speeches were delivered at the two meetings he attended in the school, the witness has not taken any action because no one wanted to testify. "We had no proofs, Malacañan pounded on us and we had to act." (16).

2. Lim Yu Ching, 46, married, merchant, Chinese residing in Batangas, testified as to how he came to know petitioners. "Sometime in 1943, about March, they invited me to be a member of the Mutual Protection Association. They asked contribution from me, P50.00. About April or May, 1946, they got P100.00 from me. After June, I refused to pay and they told me if I refuse to pay you will be in danger. And they tried to tell the people that the communists are better for they protect the people. And they also told the people there that the present administration of Roxas is not a good one—many troubles—whereas if it was President Osmeña it would be a different one." Petitioners' purpose was to organize Communism, which aimed at making trouble against the government. Tan Eng Tian is the one who asked him for contribution. He gave contributions three times in the sum of P150.00 to Tan Eng Tian, who was accompanied by Vicente Uy and Uy Se Pi. (17). "They told me that this money was to help the guerrillas somewhere in Pampanga" the name of which "I do not know." The witness refused to give further contributions because it was against the government. The contributions were given in 1946. The petitioners were preaching that after the election of Roxas the government is not good and the Americans are not good as the Russians. He cannot remember whether he gave the contributions before or after the election of Roxas. He did not notice any activity of petitioner against the government, because "I withdrew my membership in the society." He resigned in June 1946, because he does not want to be with people who are against the government. (18). The witness signed on August 16, 1947, an affidavit before the justice of the peace of Batangas, Exhibit C, written in Tagalog, of which witness knows a little. (19).

The witness knows that petitioners are preaching communistic ideas, "because when people come to my restaurant they preach that Roxas is bad." They preach to Chinese from Calapan, Mindoro and to Filipinos. (20). One of the Chinese who heard them is Lim Ching Kiap, who is back in China. No one remained in Batangas. The witness does not know the Chinese who came from Calapan. Petitioners are against the government of China, the Philippines and the United States, because they said that when Roxas was elected trouble came up, the government of Chiang Kai-Shek gave the people some trouble, and the government of America is giving calamity to the people. That is all that they said. (22). The witness has never heard of any trouble caused by any of the five petitioners. (24). The witness has never seen petitioners preaching or teaching assault or assassination of public officials, and does not know that they ever advised or advocated the overthrow by force and violence of the Government of the Philippines. (25). There are many Chinese Huks in Batangas, and they are the five petitioners and Vicente Uy and Co Tiam Tai. He does not know others. (28).

3. Julian Luangsing, 27, married, clerk, U.S. Army, testified that Vicente Maala came to his house in February, 1947 and told him that a person wanted to hire a vehicle and was offering P300.00 for a single trip from Batangas to Angeles. The witness is the owner of a jeep with which he brought Tan Eng Tian with a baggage from Batangas to Angeles, in February, 1947. The baggage contained nine sacks. They arrived at Angeles at about 11:30 in the evening. One sack was torn and the witness recognized the barrel of a carbine. (29). Maala boarded also a jeep. In front of a big camarin three Filipinos had unloaded the sacks. They were torn clothes, had long hairs and beards, and armed with carbines. (30). They started from Batangas at 6:00 p.m. The P300.00 were paid by Maala, "because we had an agreement that P150.00 will, go to me." The payment was made after the trip. The rice sacks were about five inches in diameter and one meter in length. The witness did not notice that they contained firearms. No attempt was made to camouflage the sacks. (31). When they reached Calamba civilian guards stopped the jeep and looked inside. (32). The witness drove the jeep. (33). The witness learned from the newspapers that Tan Eng Tian was engaged in communistic activities, but he does not know whether Tan Eng Tian is a communist or not. (36). The witness graduated from high school in 1934 and worked as a cleric in the municipal auditor's office in Batangas. (37).

4. Vicente Maala, 34, widower, depot commander, SPC, Batangas, residing in Gulod, Batangas, testified that in front of the market Tan Eng Tian asked him if he could have him get a vehicle for a trip to Angeles, and the witness approached Julian Luangsing. Luangsing accented and he drove the jeep to Calle Canto to pick up Tan Eng Tian. Nine sacks were loaded, the witness not knowing their contents. They started around 6:30 p.m. and arrived at Angeles at about twelve midnight. Upon arriving in front of a warehouse at Angeles, three men unloaded the cargo after which Tan Eng Tian paid the amount of P300.00. (38). While proceeding for Angeles, the witness saw the barrel of a carbine in one torn sack. The three men who unloaded them were wearing straw hats and rotten maong pants. Two were with long pants. If the witness had known that firearms were to be loaded in the jeep he would not have given transportation facilities because "I am afraid." But he did not report what he saw in Manila to any authority, because he was afraid and he was interested in the payment of the P300.00. The trip took place in February, 19 but the witness cannot remember the date. (39). Tan Eng Tian gave the amount of P300.00 to the witness. (42). Tan Eng Tian had a revolver with him. (43).

5. Pablo Manalo, 42, married, chauffeur, residing in Santa Rita, Batangas, testified that in April, 1947, Pia Uy and Vicente Uy asked him to load in his converted Jeep three bayones made of buri and other packages to be conveyed to Angeles for P200.00. The witness brought them to Angeles. There was also a third Chinese, (M-7), and it was Tan Eng Tian. The bayones contained carbines and ammunitions, a fact that the witness discovered midway between Santo Tomas and Calamba. They stopped in front of the Chinese school in Angeles. At about 4:00 o'clock in the morning, somebody met the passengers. (48). They talked in Chinese. After unloading the cargo, the witness was paid P200.00. (49). The witness saw a carbine by the trigger. The bayong was not torn.

(51). It was tightly tied on top. The bayong was made of abaca rope. (52). The witness knows that communists; are bad elements and that, when angry, they kidnap.

6. Florentino E. Rivera, 44, single, committee stenographer of the House of Representatives, testified that he is the secretary of the special committee to study House Resolution No. 9 regarding administration of oath to representative-elect Luis Taruc, et al., headed by Congressman Villa real, and identified Exhibit Sf as the report of the Villa real Committee. (56-57).

7. Uy Teng Beng, 36, married, merchant, residing in Batangas, testified that on March 30, 1946, the five petitioners went to his house in Batangas, at about 7:00 o'clock in the evening, bringing a letter from Uy Ke and asking the witness the amount of P10,000.00 for the election of Luis Taruc, stating that they wanted to elect Taruc as representative, for under his regime Chinese will have easy life whereas with the administration of President Roxas the life of the Chinese will not be so good. The witness offered to give P20.00, but not P10,000.00 for Luis Taruc, and they threatened his life and told him to be careful and not to go to Manila. On July 7, 1946, there was a celebration in the Kempson school to which the witness was invited. Tan Eng Tian made a speech saying that the troubles in China and in the Philippines are due to the leadership in the two countries and to get out of these troubles the leadership must be changed—there should be revolution. The troubles in Pampanga are due to the administration—meaning Roxas—and that all the members of the administration are collaborators. (58). The witness does not send his children to the Chinese school because it is communistic and students coming from it have communistic principles. The principal is Lee. (59). Sometime in 1946, the principal, Lee, drew the Russian flag on the blackboard and he has flags of all countries, the international flags, including the Russian flag, and said that the international flag should be down and the Russian flag should remain. He put a communist character for "Chinese country." The former principal Yu Gioc was arrested by the MPC in San Pablo. Lee was the principal in January and February of 1946. (60). At the meeting in the school where Tan Eng Tian delivered a speech, there were about a hundred Chinese. The speech was delivered in Chinese and Pia Uy spoke also in a few words. The witness did not hear very well but it was something against the Philippine Government. (61). The meeting lasted two hours and took place in the school with the doors open, from about 8:00 o'clock to 10:30 in the evening. These are houses around the school, the nearest about one meter away. The witness owns a hotel, is an importer and deals in surplus properties of the U.S. Army. His business amounts to P200,000.00. The witness is a member of the Kuomintang. (63). The witness happened to see the Russian flag in a blackboard because he went to ask principal Lee to write a letter of condolence for a friend of the witness, because Lee writes very beautiful characters. (64). It took place sometime in October or November, 1946. (65). The witness has been arrested by the CTC in Batangas. He presumed that some Chinese merchants, who may be communists, nationalists, or Kuomintang members filed charges against him because he was then controlling the sugar business in Batangas, but he does not know what the charges were. (69). Eighteen years ago he was fined P100.00 for possession of morphine. The communists want to overthrow the Philippine and the Chinese governments in order to establish a Russian government. (90). The Kempson school in Batangas is also a communistic party. (91).

8. Agent 176 of the G-2 division of the HAP assigned as investigator of aliens, without giving his name, testified that he has been connected with the division since April 17, 1945, assigned to investigate aliens particularly Chinese with derogatory information. He gathered that Chinese communists have taken a grip on the Philippines. They are working under the very noses of the authorities. Originally, Chinese laborers, were organized into tongs under the leadership of Co Keng Seng and Go Ching Chen. Sometime in 1934, they abolished the tongs and organized the Chinese Labor Union which in 1939 was expanded through the efforts of a new leader Gee Kian, with a membership of about a thousand. These Chinese communists are patterned closely with Philippine Hukbalahap and communist parties throughout the world. Sometime in 1945, Chinese communists instituted a reign of terror under the leadership of Go Ching Chen who is in charge of extortionist groups that supply the Huk

with money and arms. In the latter part of 1945 a confidential informant of the witness took picture of the Fifth Annual Convention at 80 Soler, Manila. (93). Two of petitioners appear in picture Exhibit L and "my confidential Chinese informant declared" that they are real and genuine communists. One of them is Ong Chi Ben and the other is Tan Eng Tian. The aims of the Communists is to have control over Chinese laborers with the promise of better living condition and to this end they send emissaries to organize unions and associations. Chinese communists meet at 80 Soler, Manila, particularly the members of the WaChi and the 8th Squadron of the Huks, and it is the official meeting place of the CLO, the Civil Liberties Union and the Philippine Lawyers' Guild, the last two affiliated to the Democratic Alliance headed by the recognized brain of Philippine communists and Huks, Judge Jesus Barrera. I have other reliable information regarding my investigation, but I cannot disclose it now because I have not verified it fully. The Philippine Chinese Labor Federation has the purpose of overthrowing our government by force. (94). The witness received information that the companions of petitioner are threatening to liquidate one of the members of the Board of Immigration and one member of the MPC. They also threatened the witnesses, especially Uy Teng Ben. The witness received information regarding communist movements from a Chinese ex-guerrilla captain, Fil-American. The WaChi is a real and genuine Chinese guerrilla unit who fought the Japanese in Batangas, Tayabas, Central Luzon and the Bicol provinces. The WaChis liberated Los Baños, Bay, and Santa Cruz, Laguna. (95). The witness found one company of the WaChi which was recognized and fought side by side with the American forces. He saw some WaChi in Cavite. The people who instituted the reign of terror resorted to kidnaping and investigating properties of moneyed Chinese for their own personal benefits. Chan Cha Oh is the Chinese adviser of kidnapers in Manila, who owns big buildings, a well-furnished house, one car, one jeep, and one of his children is studying in college. (96). He is under surveillance. (97).

9. Agent 591 of the G-2, MPC, without giving his name and other personal circumstances, testified that he is being used by the MPC as expert in communistic activities since April, 1947 he having studied communism since 1938. Communism is an insidious society seeking to overthrow our existing form of government and society by force and violence. It is a movement, social, political, economic and cultural, spearheaded by the Communist Party. The Communist Party in the Philippines is a unit of a larger organization, the Communist International, organized in 1919 by Nicolai Lenin, which was abolished by the Central Committee in 1943. The witness has no evidence that the Communist Party in the Philippines is a signatory to the abolition. (99). Reports from official investigations in the United States state that the Communist International is still in existence and operating underground. The Communist Party in the Philippines has been organized in 1930 by Crisanto Evangelista. In 1932, it was declared illegal by the Supreme Court, under Article 147 of the Revised Penal Code. The witness was present in the celebration made by the Communist Party in honor of the second anniversary of the death of Crisanto Evangelista, at 946 Benavides, and he saw there displayed, the picture of Mao Tze Tung the leader of the Communist Party in China. The witness had talked with some communists who informed him that Tan Malaca who was deported in 1927 was propagating communistic ideas. In 1933, the Socialist Party was established and in October of 1936, the Socialist Party and the Communist Party were merged in a convention held in Manila. From 1935 to 1939, a chain of front organizations sprang up in the Philippines. (100). The witness has not investigated the existence of communistic organizations in Batangas, although he would consider it a logical consequence of the communist movement in the Philippines. There are plenty of communistic propaganda material which is now in the hands of the Villareal Committee. "I have not come across a definite individual whom I can positively point as a member of the Chinese Communist Party in the Philippines. But, I have read propaganda materials published by Chinese in the Philippines." The idea of Communism was first put in concrete form when Karl Marx and Brederic Engels published their so-called Communist Manifesto in 1848. Between that period and 1917, revolutionary movements developed in Europe. In 1917, the Communist Party of Russia gained control of the government and under Alexander Kerenski succeeded in establishing a democratic form of government. The Third Communist International was established in 1919. Communist movements were established in 1930. (101).

The Hukbalahap is an evidence of a communist movement in the Philippines. They are seemingly harmless organizations influenced by the Communist Party. The organizations with programs set along the so-called Communist Party line are the Hukbalahap, the Democratic Alliance, the Civil Liberties Union, the Committee on Lator Organizations, the Newspaper Guild, the Philippine Writers' League, the Congress of Youth Organization, the Philippine Youth Congress, all of them similar in names and purposes with organizations under the influence of the Communist Party in the United States. One of them is the Philippine Students' Union. Luis Taruc spoke at the National University in 1939 at the Philippine Youth Congress. The organizations are headed by men of good standing in the community. The Civil Liberties Union included the names of Solicitor General Tanada and Solicitor Lim. But the witness has not investigated Chinese communists, because his activity has been mainly confined to activities of Filipino communists. (102). The witness studied Communism through books and public documents such as reports of the Supreme Court of the Philippines, reports of the Supreme Court of the United States, reports of the Congressional committees in the United States, works of Marx, Engels, Lenin, and Stalin, works of Earl Browder, former leader of the Communist Party in the United States and William C. Poster, present leader of the Communist Party in the United States, and he contacted personally the late Crisanto Evangelista and Pedro Abad Santos. The Collector of Customs has been requested for a complete set of communistic propaganda materials imported by a communist book store, and these materials are now in the files of the Villareal Committee. (103).

Several exhibits, A-L, were admitted as evidence. A, is the list of the books and magazines seized from the Batangas Elementary School. C, the affidavit of Lim Yu Ching; G, the report of the Villareal Committee; H, the affidavit of Uy Teng Ben; I, a letter addressed to Uy Teng Ben; J, a certificate of the mayor of Batangas; L, a picture.

Several witnesses testified for the petitioners.

1. Eleuterio Gamad, 34 married, chauffeur, testified that he has known Pablo Manalo since before the war. (107). Both of them were taken to Bataan. Manalo was driving an international truck owned by Uy Teng Ben. It is not true, as Uy Teng Ben declared, that he does not know and never knew Pablo Manalo. Even after the liberation, the witness saw Manalo driving for Uy Teng Ben. (108).

2. Loo Bon King, 25, single, principal-teacher in the Batangas Chinese School since July, 1946, testified that he is teaching history, geography, natural science, and arithmetic. There are six classes in the school. There are forty seven pupils enrolled, from six to sixteen years old. The school is supported by all the Chinese in Batangas. There is a record of the contribution for the support of the school. (114). Exhibit 2 is the record. Uy Teng Ben is one of the contributors. He contributed, according to the record, from January to November, 1946. His contribution was P30.00 a month. The report is submitted every month to the Commissioner of Chinese Education in Manila, with office under the Chinese Legation. Some of the contributors belong to the Nationalist Party in China and others are non-partisans. (115). The Board of Trustees of the school is composed of nine members. The President is Tan Eng Tian; the Secretary, Lim Chiong Kip and others are Go Cheng Hun, Tan Bun Tiok, Vicente Uy, Pia Uy, Uy Hoo Chai, Uy Hoo Ku, Uy Hoo Kuan, The members of the board are elected by the contributors. The board has nothing to say as to the books placed in the library of the school. The books were donated by some Chinese and some have been bought by the former principal of the school Yu Giok. The witness bought some of them. (116). He bought the "Three People's Principles," the "Personal Letters of Generalissimo Chiang Kai-Shek," the "New China" and others. Three members of the Board of Trustees belong to the Nationalist Party, Lim Chi Kiak, Uy Hoo Chan, and Tan Bun Tiok. The others do not belong to any political party. The witness is non-partisan. Uy Teng Ben stopped contributing to the school because he once asked the witness to help him be elected to the Board of Trustees, and the witness refused because, as principal-teacher, he did not like to be campaigning for

anyone to be president of the school. (117). On August 13, 1947, some MPs under Lt. Valdes, raided the school and confiscated all the books and magazines in the library and arrested the witness. The books were brought to the house of Uy Teng Ben. The other petitioners were not in the school and were arrested in their respective houses. Two teachers, Lim and Argente, who were in the school, were not arrested. Uy Teng Ben picked fifty two books, and the rest were carried back to the school. (118). Around four hundred books were taken from the school and those books and magazines which Uy Teng Ben considered not to be communistic were taken back to the school. The books and magazines were taken from bookcases in the library which were open. Few people went there to read the books. The students have no time to read them. The library was public so that anybody who wants to read the books can do so. The witness read only some of them. The other petitioners did not read them. Leaflet Exhibit K was not taken from the school and no copy of it can be found in the school. On July 7, 1947, there was no celebration. The witness did not deliver any speech on said date. (119). On October 10, 1946, being Chinese Republic Day, there was a celebration for students, and the speakers were all students. None of petitioners ever spoke in the affair. On October 10, 1946, there was a celebration in the house of Uy Teng Ben, on the occasion of the birthday of Chiang Kai-Shek. Among the speakers were Uy Teng Ben and Tan Eng Tian; both extolled Generalissimo Chiang Kai-Shek. (120). Exhibit 10 is the invitation to all Chinese in Batangas to attend the celebration of the birthday of Chiang Kai-Shek in the house of Uy Teng Ben. Exhibit 11 is the program of said celebration. (121). Exhibit 12 is the list of all those who contributed for the expenses of the celebration. The school was founded in memory of Cliua Kepsi, who was the President of the Chinese Anti-Japanese Association in Batangas and who was killed by the Japanese because he did not surrender. Chua Kepsi was a member of the Kuomintang. (122). The school is registered in the Chinese Consulate General. Exhibit 13 is the copy of the application for recognition of the school sent to the Chinese Consul. Exhibit 14 is a letter from the Office of the Chinese Commissioner of Overseas Education authorizing the school to collect contributions from the Chinese in general. (123). Exhibit 15 is a letter from the Office of Chinese Commissioner of Overseas Education certifying that it has received the monthly report of contributors and the expenditures of the school in the month of July, 1946. Exhibit 16 is a certification from the Chinese Consulate General allowing the school to collect contributions from the Chinese. Exhibit 17 is an order requiring the school to fill a blank application to the Ministry of Education in China. The school is under the jurisdiction of the Chinese Consulate General. (124). Lim Yu Ching had two of his children studying in the school up to April, 1947. He stopped sending the children to the school because his restaurant is already closed and he transferred to the seashore and cannot afford to pay for the transportation. When he had his restaurant, he was charging P150.00 a month for the meals of two teachers. When he asked for payments in advance, the witness refused, and this refusal provoked his hatred. He is bankrupt. It is not true that the petitioners used to preach communism in the restaurant of Lim Yu Ching. Exhibit 1 is a notice to all the students and Chinese in Batangas to attend the funeral of WaChi Yao on December 29, 1946. (125). On December 29, 1946, there were no students in the school. It was Christmas vacation. It is not true that on said day the witness drew a Russian flag on the blackboard. It is not true that in any meeting in the school it was ever mentioned that the Roxas administration is bad. Revolution against the Philippine or Chinese government has never been advocated by any one in the school. (126). It is not true that the witness and other petitioners had ever gone to the house of Uy Teng Ben to ask for a contribution of P10,000.00 for the election of Luis Taruc. (127).

3. Tan Eng Tian, 41, single, merchant, residing in Batangas, testified that he is engaged in chucherias in the market of Batangas. He is the Chairman of the Board of Trustees of the Batangas Chinese School and one of the executive members of the Chinese Chamber of Commerce of Batangas. He was elected by the Chinese community as president of the Board of Trustees which is composed of nine members. His duties are to supervise the finances of the school and to employ the teachers. He takes charge of the construction of the school. The internal affairs of the school are run by the principal of the school. The buying of books is under the supervision of the Board of Directors, and they are bought from Chinese stores in Manila with the approval of the Central

Government of China. The school was organized on July 14, 1945; in memory of Chua Kepsi, President of the Chinese Anti-Japanese Association in Batangas. (133-131). The school was organized by the whole body of Chinese in Batangas. They are financing it by monthly contributions. Exhibit 2 is a report of contributions. The 2,415.00 spent for the construction of the school were taken from voluntary contributions of Chinese residents of Batangas. Uy Teng Ben contributed the amount of P150.00 for the foundation funds. (135). From January to November, 1946, he contributed P30.00 a month. Receipts are being issued for contributions. Uy Teng Ben stopped contributing because he failed to become president of the school. (136). The witness is the one who initiated the idea of establishing the school. (137). The witness does not belong to any political party because he is a businessman and does not have time to work for any party. The rich people in Batangas contributed to the school, such as Chua Bun To, the richest in Batangas, Cua Chi Pan, who owns a limber yard, Tan Bing Suan, President of the Chinese Chamber of Commerce, Lim Kok Loa, and Uy Ho Kim, who are rich and big businessmen. (138). The witness has never approached Uy Teng Ben to ask for P10,000.00 as a contribution to help in the election of Luis Taruc. He never knew who Luis Taruc is. (146). The witness denies having hired a jeep to transport any firearm to Angeles, as testified by Luangsing and Maala. He does not know any one of them. He has never been to Angeles. He has never been accused or convicted of illegal trafficking of firearms. He has Chinese friends owning jeepneys for hire. (147). He often used to ride in their jeepneys to Manila and bring goods to Batangas. He has no connection with the Huks. He does not know Pablo Manalo. He never rode together with Pia Uy and Vicente Uy. (148). Exhibit 201 is a certificate issued in favor of the witness issued by the chief of police. Exhibit 2 is the one issued by ex-mayor Pedro M. Berberrabe. (149). Exhibit 23 is another certificate in favor of the witness by Governor Castillo of Batangas. (150).

4. Vicente Uy, 35, married, barber, resident of Batangas, testified that his barber shop is worth about P3,000.00 and he keeps there two pictures of Chiang Kai-Shek. He does not belong to any political party, and has never been convicted of any crime or misdemeanor. (155). He has a certificate of good moral conduct and character issued by chief of police Apolonio R. Corpus. (See Exhibit 24). Exhibit 24 is another certificate issued in his favor by provincial governor Modesto Castillo. (156). Mayor Roman L. Perez of Batangas, issued in favor of the witness. Exhibit 26, another certificate of good conduct. Exhibit 27 is another certificate issued by Mayor Pedro N. Berberrabe. Exhibit 28 is the certificate issued in favor of the witness by the provincial revenue agent in Batangas. The Chinese school in Batangas has been established in memory of the death of Chua Kepsi, president of the Chinese Anti-Japanese Association. It is maintained by contributions from the Chinese community in Batangas. The witness has also contributed. (157). He contributed P10.00 a month and for the construction of the school building he gave P520.00. During the enemy occupation Uy Teng Ben gave a banquet in Batangas in honor of Japanese officers. The cook who prepared the food for the banquet was Lim Yu Ching. (158). It is not true as testified by Lin Yu Ching that petitioners have preached against the administration and that they preferred the government of Russia. Lim Yu Ching had ill feeling against the witness because two teachers who used to eat in his restaurant came to eat in the place of the witness and lately Lim Yu Ching tried to borrow money from the witness and was disgusted because the witness refused to lend him. Formerly Lim Yu Ching had been borrowing several amounts of money from the witness, the total amounting to P300.00, but no part of it has been paid yet. The witness denies that Tan Eng Tian, and Pia Uy and himself, have ever hired a jeep to transport three bayones containing firearms and ammunitions to Angeles. (159). Uy Teng Ben has been imprisoned in Muntinglupa after liberation because during the occupation he was furnishing bread to the Japanese army in Batangas. (160). It is not true that the witness and others went to the house of Uy Teng Ben on March 30, 1946, demanding contribution of P10,000.00 for the candidacy of Luis Taruc. (161).

5. Yap Lin Sun, 31, single, merchant, residing in Batangas, testified that he has been a member of the Board of Trustees of the Kepsi school since 1945. The people elected him to said position, meaning the Chinese

contributors to the funds of the school. Petitioner Ong Chi Ben and the principal of the school are not members of the Board of Trustees. (166). The members of the Board of Trustees do not meddle in the school affairs of the school. In January, 1947, the witness was arrested and investigated by Major Magallanes because of a complaint filed by Uy Teng Ben. After the investigation he reported to the town mayor that the MPs wanted him to give them P1,000.00 and as he refused to give the amount, the witness was struck on the stomach. The officers who reported were Lt. Calalo and agent Serrano. The case was reported by the mayor to the provincial governor who called Major Magallanes to take up the matter, and as a result, Angel Seerano, agent of the MPC, was dismissed from the service and Lt. Calalo was transferred to San Juan, Batangas. (168). Mien the raid in the school was made, the witness was in his store. He was arrested on August 13, 1947. During the Japanese occupation, Uy Teng Ben invited the witness to invest in a "bijon" business. The witness invested P1,000.00 and Uy Teng Ben and his brother P4,000.00. The witness withdrew later from the partnership in view of a fraud he discovered in it. (169). During the Japanese occupation the house of Uy Teng Ben was shot at, and Uy Teng Ben thought that the witness and Berto Alguilera were responsible for the shooting, and the Japanese arrested the witness and Alguilera. The incident took place in 1942. The witness was Dafcer released. (170). He was released with Alguilera about one week after their arrest. After the liberation, Uy Teng Ben was arrested by the CIC because in 1942 he had been dealing in coal and bread with which he furnished the Japanese. Uy Teng Ben himself told the witness about that fact. Uy Teng Ben has also been furnishing the Japanese with scrap iron salvaged from sunken ships. (171). There was no celebration in the school in July, 1946, and the witness does not know how to make any speech. On October 10, 1945, there was a celebration on the occasion of the anniversary of the Chinese Republic. Tan Eng Tian delivered an address. (172). He stated that it was fortunate for us that the war is already terminated and we have celebration of the Republic of China, and said that the overseas Chinese should improve in education and the Chinese businessman should face peace and order. Pablo Manalo was the driver of Uy Tenfe Ben's truck and he continues to be a driver in the service of Uy Teng Ben. It is not true that the witness, Vicente Uy and Tan Eng Tian transported firearms to Angeles. (173). The witness has never ridden in the jeep of Pablo Manalo. The witness knows several Chinese owning jeepneys and they are his friends. It is not true that witness and other petitioners went to see Uy Teng Beng to ask P10,000.00 as contribution for the election of Luis Taruc. The witness has never gone to the house of Uy Teng Beng. (176). Exhibit 33 is a certificate issued by the chief of police in favor of the witness. Exhibit 34-1 is one issued by the mayor of Batangas Roman L. Perez, and Exhibit 35 is one issued by Pedro M. Berberrabe, ex-mayor of Batangas. (176). Exhibit 36 is a certificate issued by Governor Modesto Castillo. (177). Lim Yu Ching does not have any business and is at present engaged in cockfighting. It is not true that the witness and the other petitioners used to eat and preach communism in the restaurant of Lim Yu Ching. The witness has never gone to said restaurant. Lim Yu Ching has been convicted of having killed his compadre Heran alias Uy Chek Chong. The witness happened to learn about that killing which took place at about the outbreak of the war, because he was a neighbor of Lim Yu Ching. Although Lim Yu Ching was convicted, he was able to escape when the war broke out. Uy Teng Beng has been imprisoned for trafficking opium. (178). During the Japanese occupation, Lim Yu Ching was imprisoned for six months. Lim Yu Ching thrice tried to borrow money from the witness but the latter refused. (179).

6. Ong Chi Ben, 43 married, manager of a market stall in Batangas, testified that he aided the Batangas Chinese school by contributions. He is not employed in the school. He does not belong to any political party. (186). He has been residing in the Philippines for twenty seven years. He has never been accused or convicted of any crime. (187). It is not true that the witness has ever gone to the house of Uy Teng Beng to ask a contribution of P10,000.00 to help the election of Luis Taruc. The witness went only once to the house of Uy Teng Beng to ask contribution to help the relatives of those who have been killed by the Japanese. The witness was authorized by the WaChi to ask for contribution. The authority of the witness to ask for contributions from the WaChi appears in Exhibit 1, which was delivered by the witness to Uy Teng Beng. The latter contributed P20. The other petitioners

were not present when the witness delivered the letter to Uy Teng Beng. (188). The witness was accompanied by Go Kok. During the twenty seven years of his residence in the Philippines, the witness never went to Angeles. The witness has never seen leaflet Exhibit K. It is not true that the witness has ever preached communistic doctrines in the restaurant of Lim Yu Ching. (189). The witness is not a communist. He does not know anything about communism. He does not belong to any party. Exhibit 38 is a credential issued by Mayor Roman L. Perez of Batangas in favor of the witness. Exhibit 39 is another certificate issued in favor of the witness by Pedro M. Berberrabe, ex-mayor of Batangas. (190). Exhibit 40 is a certificate issued in favor of the witness by the chief of police of Batangas, Apolonio R. Corpus. Exhibit 41 is a certificate issued in favor of the witness by Governor Castillo. (191).

7. Loo Hong King identified Exhibit 42 as the certificate issued in his favor by Mauor Jose L. Acuna of Cabuyao, Laguna. Exhibit 43 is a certificate issued in his favor by Jose Manalo of Calamba and Congressman Eduardo Barreto, representative of the first district of Laguna. Exhibit 44 is a certificate issued in favor of the witness by ex-mayor Pedro M. Berberrabe. Exhibit 45 is a certificate issued in favor of the witness by Mayor Roman L. Perez of Batangas. (198). Exhibit 46 is a certificate issued in favor of the witness by chief of police Apolonio R. Corpus. Exhibit 47 is a certificate issued in favor of the witness by provincial governor Modesto Castillo. Exhibit 48 is the portrait of Chua Kepsi, made by Salazar Studio, which is kept hanging in the Batangas Chinese School. (199).

8. Lao Ban Lung, 13, single, student, residing in Batangas, testified that he is studying in the Kepsi Chinese school in Batangas. He is enrolled in the third grade. He is a newspaper distributor. He distributes the Chinese Guide Newspaper, the Daily Advertiser, formerly Chinese Commercial News. (202). The witness has seen Exhibit K while he was delivering newspapers. The leaflet was inserted in the newspapers, in the Chinese Guide. The witness does not know the contents of the leaflet. The witness must have distributed with the papers less than fifty leaflets of the kind of Exhibit K. In every newspaper there was inserted a copy of laflet Exhibit K. There are more than ten subscribers to the Chinese Guide in Batangas. (203). The witness receives the newspapers from the railroad station in Batangas. (204).

Lim Yu Ching, testifying as rebuttal witness, denied having killed a Chinese in Batangas, but admitted that he has been imprisoned. "I was drunk and we had a quarrel and he struck me with a chair and I ran retreating near a window and there was a small knife and with that knife...." The witness has been imprisoned for about six months and was made to pay P170.00. He was imprisoned for physical injuries. (210). The chinese Uy Chek Chong was sent to the hospital and after a few days he left the hospital and after a year he married a Filipina; later on, he died of sickness. The witness' denied in his first testimony having been convicted of any crime, but now he admits having been convicted according to Exhibit O.

The prosecution against petitioners, as can be gathered from the evidence, the substance of which is outlined above, aimed at showing the following:

1. That petitioners are communists and have been running and using the Batangas Chinese Elementary School, also known as the Kepsi School, as a front and as a means for the propagation of Communism;
2. That petitioners made utterances criticizing the administration of President Roxas and the present governments of China and of the United States of America and showing preference for the Russian government;
3. That principal Lee has sketched the Russian flag in the blackboard, stating that it should prevail over the flags of other nations;
4. That the students of the school have been given a communistic leaflet;

5. That among the more than four hundred books and magazines taken from the shelves of the school library, there were fifty two which are communistic;
6. That petitioners sought from Uy Teng Beng a contribution of P10,000.00 to help the election of Luis Taruc as representative;
7. That in the restaurant of Lim Yu Ching petitioners have been preaching Communism to some Chinese customers coming from Mindoro; and
8. That some of the petitioners brought firearms from Batangas to Angeles, Pampanga, where they were delivered to unknown persons.

A careful consideration of the voluminous oral and documentary evidence impels us to arrive at the definite conclusion that the evidence for the prosecution was not with utter failure. Not one of the specific facts the prosecution intended to show has been proved conclusively. The proceedings against petitioners, partaking of the nature of a criminal case, because it entails a heavy penalty, not only arrest but deportation, petitioners' guilt must be proved beyond all reasonable doubt. In the present case, the prosecution cannot even validly pretend to have the preponderance of evidence on its side.

Whatever damaging testimony has been given against petitioners is either hearsay, and, therefore, absolutely useless, being incompetent under the law, or comes from the mouth of unreliable witnesses, harboring ill-feeling against petitioners, or from persons in their service, aside from the fact that their testimonies are self-contradicting, one of the characteristic earmarks of falsehood.

The prosecution witnesses had been successfully and conclusively belied by oral and documentary evidence presented by the petitioners, with the support of some of the documentary evidence presented by the prosecution itself.

Furthermore, the prosecution and its witnesses appear to have a hazy idea as to Communism and as to who are communists.

Agent 176 of the G-2 Division of the HAP, one of the two anonymous witnesses used by the prosecution against the petitioners, was presented as an expert on Communism, as preached by Marx and Engels, abroad and in the Philippines, pretended to show that the CLO or Congress of Labor Organization, the Civil Liberties Union, the Philippine Lawyers' Guild, and the Democratic Alliance are all Communist organizations, and that Judge Jesus Barrera is the brain of Philippine Communists and of the Huks.

Agent 591 of the G-2, MPC, the other anonymous witness used by the prosecution, another expert on communistic activities, alleging that he has been studying Communism since 1938, mentioned as communist organizations the Hukbalahap, the Democratic Alliance, the Civil Liberties Union, the Committee on Labor Organizations, the Newspaper Guild, the Philippine Writers League, the Congress of Youth Organization, the Philippine Youth Congress, the Philippine Students Union, and specifically mentioned as members of the communist Civil Liberties.

Union two former solicitors general of the Republic of the Philippines, Lorenzo M. Tanada and Manuel Lim. The latter has been a Justice of the Court of Appeals before becoming Solicitor General. The former has been a fiscal and a judge of first instance, before occupying the position of Solicitor General, the position from which he resigned to run for Senator, to which he was elected by polling the largest number of votes in the November, 1947, national elections.

The last witness relied much on information he gathered from the report of the Villareal Committee of the House

of Representatives, one of the incompetent documentary evidence accepted by the investigating board.

Regarding the firearms pretended to be brought by some of petitioners from Batangas to Angeles, aside from the inherent improbability of the story, accepting at their face value the declarations of the witnesses for the prosecution, there is nothing in said testimonies to show to whom the firearms were delivered. It can be surmised that the persons who received them in Angeles belong to isome "subversive elements;" it can also be conjectured that fehey are merchants profiteering in firearms. Surmises and conjectures may carry us far, but the end will always be confusion and darkness.

As to the nature and character of the fifty two books and magazines selected from the library of the Kepsi School, there is absolutely no competent evidence.

Even if they should appear to be communistic, that is not an evidence that the petitioners are communists. There is, undoubtedly, no more communistic document than the famous Communist Manifesto drafted by Marx for the Third International, and there can hardly be found any cultured person in this country who does not keep in his private library one or more books containing the whole text of the grandiloquent manifesto, and no one will pretend that the majority of our cultured persons are communists.

Many of us have been and are in possession of books written by Karl Marx and Erederic Engels, especially "The Capital," the communistic bible, and there is no person who is so stupid to brand us as communists by the mere possession of said books, as no one would brand us as Nazis for keeping in our possession a copy of the "Mein Kampf." And there is Agent 591, witness for the prosecution, who confessed having in possession and studied many communistic books, but no one brands him as a communist.

The witnesses against petitioners may be divided into three categories: (a) the hearsay and anonymous witnesses; (b) the grudge-motivated and with criminal record witnesses; and (c) the traveling-witnesses.

To the first group belong Lt. Armando Valdes and Agents 176 and 591 to the second group, Lim Yu Ching and Uy Teng Beng; to the third group, Julian Luansing, Vicente Maala and Pablo Manalo.

The testimonies of the last three were given with the purpose of showing the two trips from Batangas to Angeles of some of petitioners with bundles of firearms delivered to unknown persons. The improbabilities and contradictions in their testimonies make them unworthy of credence. At any rate, they would tend to show only the act of transporting firearms to be delivered to unknowm persons, which is not any one of those specified in paragraph 8 of Section 37(a) of Commonwealth Act No. 613. Besides, the prosecution itself must not have placed any reliance on the testimonies of said three witnesses when it abstained from filing any information or complaint against petitioners for illegal possession of firearms.

With respect to the testimonies of the two witnesses of the second group, Lim Yu Ching and Uy Teng Beng, strong reasons compel us to reject them as utter falsehoods.

Both witnesses are persons who, by their past experience, have shown little compunction in violating the law. Both carry as their distinguishing blazon their respective criminal records. Uy Teng Beng was convicted for illegal possession of morphine, which shows that he is a person who would not mind violating the law; if necessary to satisfy the base yearnings of a vice. Lim Yu Ching has been imprisoned for knifing a human being, and at the investigation he convicted himself of stark perjury when in his first testimony he denied his having been convicted for the knifing and in his second testimony, as rebuttal witness, he had to admit his conviction in the face of the documentary evidence Exhibit O.

Uy Teng Beng, desiring to become president of the Kepsi school, tried to obtain the support of petitioners as an

effective means of attaining his ambition. Petitioners refused to lend their support. For an ambitious man such as Uy Teng Beng, who would not discriminate between means to attain his purposes, such as when during the Japanese occupation he tendered a banquet to enemy officers and furnished them with scrap iron and other materials, petitioners' refusal could not have failed to provoke his anger and induce him to help in causing petitioners' doom. His failure to obtain advance payments for the meals being served to two teachers of the Kepsi School must have induced Lim Yu Ching to testify against petitioners.

With respect to the witnesses of the first category, their testimonies are absolutely worthless. Said testimonies are incompetent because they are hearsay and do not belong to the class of hearsay testimonies which, by express exception of the law, are admissible. The three witnesses testified only on what they have learned from other persons. None of them is answerable for the falsehoods that the hearsay information may contain. They cannot be prosecuted for perjury and misinformations which the third persons may have given to them. Much more so if we consider that two of, the three witnesses, with the full approval of the investigating board, refused to disclose their names and personal circumstances, adopting an attitude not unlike persons throwing stones from the bushet; or firing shots from the darkness. One of the interesting aspects of their testimonies is their allegation of having received information from Chinese communists and in Chinese communistic centers in Manila, but against none of said Chinese communists has an action been taken by them.

But, even accepting that the facts intended to be proved by the prosecution have been proved, they do not bring petitioners under the sanction of Section 37(a) of the Immigration Act of 1940, because none of said facts are comprehended among the items of factual grounds specified in paragraph 8 of said section.

In reviewing this case, must avoid all deceptions and taking a rash action that, besides inflicting a grave injustice to a persecuted minority in an alien group, would cast a permanent discredit to the standards of our administration of justice.

Before we proceed further we wish to clarify some traditional legal concepts regarding judicial revision of the administration of immigration laws by the executive branch of the government. It is essential to enunciate at the very beginning the following principles:

1. Justice is the paramount consideration in the enforcement, execution, and administration of all laws, without excluding immigration laws.
2. In the exercise of its revisionary powers, whether on proceedings of inferior courts or on actuations of officers and agencies of other branches of the government, the Supreme Court should not be guided by any consideration foreign from the supreme purposes of justice, as official or unofficial courtesy, blind acceptance of the infallibility of any one, or presumption of legality in favor of a legal error or exemption in favor of certain officials from following or enforcing recognized legal principles.
3. The legal rules of evidence, being rules of justice, are enforceable, not only in judicial proceedings, but in all official proceedings for the determination of controversial facts as a requisite for the application, enforcement, or execution of any law.
4. For the administration of justice, we should not look at a friend through the blinds of favoritism, we should not judge the enemy using eyeglasses of hate, and every person should be accorded only which is due him, not more nor less.

The doctrine that "unless it is conclusively shown that there has been an abuse of discretion or authority, or a violence of law," the judicial branch will not interfere in the administration of immigration laws by the executive branch of the government, must be revised by changing the adverb "conclusively" with the adverb "convincingly".

It is not necessary that the violence of law, abuse of authority, or abuse of discretion committed by immigration officials should be shown beyond all doubt for the courts to intervene. It is enough that it must be shown in a way to raise judicial conviction that such violence or abuse has been committed. The whole theory is based on a surrender of judicial responsibility for the sake of courtesy to another branch of the government. Such pusillanimous abdication of judicial authority is violative of the temper and spirit of our Constitution. It is unbecoming for the judiciary to shirk a responsibility befalling on it.

The doctrine that there is no abuse of discretion or violence of law when the findings of the administration officials are supported by some evidence or justified by any principle of evidence and that courts cannot review the weight or admissibility of evidence presented to the immigration officials should not be countenanced further for any single moment. Besides showing a judicial renunciation of constitutional authority and power it constitutes a go signal for abuse and arbitrariness, for tyranny and oppression, if not for graft and corruption, when officials bent on easy enrichment are given despotic or authoritative powers.

To accept that immigration officials may arrest and exile by deportation any alien upon shade of evidence, upon hearsay evidence, which is not evidence at all, upon incompetent and inadmissible evidence, is to enthrone them as absolute masters at whose mercy thousands and thousands of peaceful and law abiding aliens shall be placed. As in the number of said aliens are included one of the largest moneyed groups of the country, the doctrine may create a mining boom for the extortion and blackmail artists, a tiring likely to happen in the midst of the wide spread moral debacle decried by so many.

The present case offers a glaring example of an adverse decision against petitioners without any competent or admissible evidence to support the finding of guilt for violation of the Immigration Act of 1940. The fact that their alleged criticism of the administration of President Roxas and their preference for the administration of President Osmeña have been the motive or pretext for their arrest and investigation, resulting in the iniquitous decision we are considering, adds gravity to the injustice committed against petitioners. If it is true that they have voiced such criticism, they have only exercised one of the immutable fundamental rights guaranteed by our Constitution to all persons.

When these aliens were allowed to enter our country and to peacefully live with us, no one put muzzles on their mouths nor imprisoned their minds into the shackles of intellectual slavery. We did not impose upon them the duty of carrying a spiritual straight-jacket to bind their freedom of opinion. Subject to specific legal limitations, such as participation in elections or occupancy of official positions in government, we accepted their living with us, not as unfortunate deaf-mutes, but as normal human beings in the normal exercise of their human faculties, including the faculty of forming their opinions according to their honest judgment and of freely expressing such opinions. Not only because they are liable to pay taxes for the support of our government, but because our government is a cooperative enterprise, which affects and must be supported by all inhabitants, the aliens are entitled and duty bound, as much as the citizens, to express their honest opinions, whether right or wrong, about our government and our officials, and about how our public affairs are run.

The fact that petitioners belong to the class of foreigners who, not many decades ago, have meekly submitted themselves to scornful treatment in our country, does not make them less entitled to be dealt with the fairness demanded by the human dignity which is theirs as ours in equal measure. Chinese and Filipinos are members alike of the same human race, as much as Caucasians and Negroids, Indians and Eskimos, Hottentots and Patagonians. They are endowed with the same sense of justice and fairness as our people, and their mentality can grasp the same truths as our minds. They can understand the doctrines of Rizal and Mabini, the dynamism of Quezon, the eloquence of Roxas, as much as we can understand the analects of Confucius, the teachings of Illencius, the doctrines of Lao Tzu, the imagination and paradoxes of Hwang Chu, the political achievements of

Sun Yat Sen and Chiang Kai-Shek.

Not long ago, in the deportation case against Harry Bridges, the Australian-born CLO leader, as a Communist affiliate, in a concurring opinion with the decision of the Supreme Court of the United States setting aside the deportation (*Bridges vs. Wixon*, 326 U.S. 135), Mr. Justice Murphy said: The record in this case will stand forever as a monument to man's intolerance of man. Seldom if ever in the history of this nation has there been such a concentrated and unrelentless crusade to deport an individual because he dared to exercise the freedom that belongs to him as an individual and that is guaranteed to him by the Constitution. The words can perfectly be repeated regarding this case, where five Chinese residents are intended to be deported because they have exercised the fundamental freedom of all human beings to express their opinion about the government under which they live.

Not because petitioners are Chinese shall they be accorded less justice to which they are entitled. The Indelible stigma branded on the forehead of democracy and civilisation by the farcical proceedings under which two of the most famous generals of the vanquished Japanese army, Yamashita and Homma, were executed, should not be made darker by the ignominy of another injustice perpetrated of members of a race other than ours.

We are not to end this opinion without expressing in an unmistakable way our disagreement as to how the majority have adopted the findings of fact of the Commissioner of Immigration made in the decision in question, when such findings have absolutely no valid support in the evidence on record which the majority of the members had not even taken the trouble to read and much less to analyze. Of course, the attitude is in consonance with such pronouncements in the majority opinion as that hearsay evidence may be admitted, that courts will not weigh a conflicting evidence nor determine the credibility of the witnesses, that the findings of immigration authorities will not be reversed regardless of whether courts might find differently from the evidence submitted. Such pronouncements are revolting to our sense of fairness and violate the most elemental principles of justice. Under the cloak of such pronouncements, executive or administrative officers may freely indulge in a spree of arbitrariness and illegality that will have to end only when the sovereign people should by direct action stop the abuses.

Our vote is to set aside the decision of the Board of Commissioners on Immigration, to declare illegal the arrest and intended deportation of petitioners and to order that they be restored to their freedom without delay.

DISIDENTE

BRIONES, M.:

Siento no poder estar conforme con la decision de la mayoria. Creo que este es un caso en que podemos revisar y revocar la orden de deportacion expedida por la junta de inmigracion por uno de los motivos que se admiten en la misma: abuso de discrecion o facultad. Son tan fútiles y tan tenues las pruebas en que se apoya la orden que es lo mismo que si no existiera ninguna prueba. Parece elemental que el coactivismo en sí, como ideología social, económica y política no es motivo de deportacion, ni es materia de delincuencia. El comunismo, para ser enjuiciable, tiene que ser subversivo, es decir, tiene que haberse traducido en acción violenta y revolucionaria, o en propaganda oral o escrita de tal acción. Uno puede ser marxista y todavía no ser delincuente si no predica o pone en práctica el lema de la acción directa, es decir, de la revolución para imponer el comunismo preconizada por Marx y sus incondicionales seguidores.

Creo que en el presente caso no se ha probado ese tipo de comunismo subversivo. Las pruebas o son frívolas, o son completamente indignas de crédito.

Una de las pruebas es el hallazgo de libros y folletos de tendencia comunista (communistic leanings) en la biblioteca de la Batangas Chinese Elementary School, manteada por los peticionarios. Es esto criminal? Positivamente que no. Si lo fuera entonces habria que encender una gran hoguera inquisitorial en la histdrica Luneta y hacer auto a de fe con todos los libros de Marx, Engel, Lenin, Trotzicy y otros autores conunistas que hoy deben figurar en la biblioteca nsicional y en las bibliotecas de nuestras univeraidades y colegios. Tengo unos cuantos libros comunistas en mi pequeña biblioteca particular: esos estarian expuestos a ser quenados en la formidable hoguera. Y todo esto se haria daspues de que los Presidentea de dos Universidades faiiosas del aundo - Harvard y Columbia - han declarado recienteiaente, sin escfindalo de nadie, que para combatir eficazraente el comuniano hay que conocerlo, y para conocerlo hay que estudiarlo naturalsieiato.

El Presidente Conant, de Harvard, y el Presidents Eisenhower, de Columbia, nan dado en el clavo. Los corifeos del comunismo preterden dar a sus teorlas y utopismos un baaamonto cientifico. Asi que no hay mas remedio que combitirio cientlficamente tembien. Hay que desiostrar inteligentemente a la juventud y a las masas aus falacias, su irracionalidad. Hay que deaostrar que el oonunismo es ateo; que su aistema economico y aocial es absurdo antinatural, inhumano; y que su ideologia politico eg absolutaaente incompatible con la dignidad hunana y la libertad individual - precioso tesoro ganado por la humanidad a costa de tantos sacrificios y t ant as vicisitudes.

Laa deiaocracias no pueden ni deben adoptar la actitud del anrestruz: escondiendo la cabeza en la arena del deoierito, creyando con ello rehuir el peligro.

Con la ignorancia y el fanatismo ninguna buena causa se ha ganado jamas.

Voto en favor dol recurso de habeas corpus.

DISSENTING

TUASON, J.:

I am thoroughly convinced from a reading of the record that the charges and the testimonial evidence which would connect the petitioners with communism and impute to them subversive activities are unfounded. It is on this ground that I am unable to agree with the dismissal of the petition for habeas corpus.

The rule which attaches finality to the findings of immigration officials must yield in the face of a palpably wrong and unjust decision. Jealous regards for the rights of the petitioners should be had in a case, like this, fraught with serious consequences to the parties. As stated by Mr. Justice Brandeis speaking for the court in *Ng Fung Ho vs. White*, 259 U. S. 276, 284 deportation may result in the "loss of all that makes life worth living." Indeed, deportation in the present case means loss of homes, families, entire business, and probably life.

In *Schineiderman vs. U. S.* 315, U. S. 118, 1943 the Supreme Court refused to follow the principle of the conclusiveness of findings of fact of the trial court and the court of appeals. Although that case concerned a petition to cancel registration of citizenship, said to be the first of its kind in the United States, and was begun in a federal district court, yet the same rule obtains in such cases as in proceedings before administrative bodies, that determination of facts from evidence heard in open court are final. See Mr. Chief Justice Stone's dissenting opinion. And in the most celebrated deportation case and one of the most celebrated of all cases brought before the Supreme Court of the United States, *Harry Bridges vs. Wixon* 326 U. S. 135, [1945]; the court through a hair-splitting analysis of the evidence upset the conclusions of the administrative officers charged with finding the facts, that Bridges was a member of or affiliated to the communist party. And the administrative officers were no less than the Attorney General, who reviewed the evidence and whose decision under the law was final, and Judge

Sears, formerly of the Court of Appeals of New York, the hearing officer who saw and heard the witnesses and who had been appointed especially for that purpose and by reason of his outstanding qualification for the job.

This is not advocating a departure from the rule which prohibits intermeddling with decisions on questions of evidence in administrative proceedings. But this rule requires that decisions be supported by substantial evidence. By substantial evidence, in my judgment, is meant real evidence, or at least evidence about which reasonable men after a careful investigation and consideration may disagree. The dissenting opinions in the two cases just cited which, I admit, are more sound, concede that evidence "unbelievable on its face" is an exception to the rule that it is for the administrative officer to determine its credibility. Other courts have held "flagrant error" to be sufficient justification for the issuance of habeas corpus.

The relevant testimony offered against the petitioners is, I submit, unbelievable on its face, and a flagrant error has been committed. All damaging testimony which the deportation board accepted unqualifiedly is, to my mind, untrustworthy, extremely contradictory, the and in many of most vital points silly. At the bottom of these proceedings is enmity, hatred or rivalry between the petitioners on the one hand and Uy Teng Beng on the other, a wealthy Chinese whose ambition to become president of trustees of the Chinese School was thwarted by the petitioners. It is significant that a link has been established between Uy Teng Beng and the prosecution witness who gave the only evidence which, if true, would sustain the charges.

In contrast with the unbelievable testimony against the petitioners, there are undisputed facts which corroborate the petitioners denial that they worked to spread communism in the Philippines. Some of the petitioners had well-established means of livelihood in Batangas, some with families. The provincial governor and municipal officials have certified to their good conduct as inhabitants of the community in which they lived. The school which is said to have been used by them for communistic purposes was organized and financed by the Chinese community, including Uy Teng Beng and Chinese businessmen who are loyal to the nationalist government of China. It was these Chinese who appointed or elected the petitioners to their post's in the Chinese school. The school was recognized by the Overseas Chinese Administration, an agency of the Chinese National Government if not attached to the Chinese Consulate General in Manila. There are proofs likewise uncontradicted which show that the petitioners organized or participated in celebrations held in that school to honor General Chiang Kai-Shek and to commemorate other national events dear to non-communist or anti-communist Chinese.

The books seized in the school at the instance of Uy Teng Beng do not prove the accusation that the petitioners had team purchased them as a means to spread communism. This circumstance bears witness to their innocence. The petitioners or some of them had been arrested before on charges of being communists but were released for lack of evidence. If these books had been placed in the library as part of a communistic propaganda, the petitioners could not have been so foolish as not to destroy or hide them instead of allowing them to remain where they were found the second time they were arrested. It is important to note a point which has been disregarded, that the library was composed of about 400 volumes and that there were books and periodicals which sing the praise of General Chiang Kai-Shek, of his government and of his achievements.

Of the fifty books seized from the school and apparently sent to the Chinese Consulate General for translation, the Consulate General apparently found only a few that have any bearing on communism, extracts of which were submitted to the board. These extracts are mostly attacks or criticisms against the Nationalist Government of China, some against the United States. But there are libraries, public and private, which contain books more radical and more revolutionary than these and yet their possessors can not be said to be communists or Nazis, fellow travelers, or sympathizers of Hitler or Stalin.

The distribution of copies of a leaflet by a son of petitioner Vicente Uy was done without the knowledge of any of

the defendants, according to the boy's uncontradicted and plausible testimony. He said he was a distributor in Batangas of the Chinese Guide and Daily Advertiser, copies of which he received at the railroad station, and that the sheet in question was inclosed with these papers as supplement. Moreover, the central theme of the leaflet is a plea to its readers not to "give aid in any form to the internal strife in China" in order not "to prolong the civil war in China and to increase the suffering of the Chinese people." This sheet in no way preaches communism although it may reflect a leaning against the Nationalist Government.

Granting that Vicente Uy was aware of the distribution of these papers, there is no evidence that the other defendants were responsible in any way for that distribution. This, incidentally, is a kind of error which has been committed not only with respect to this particular evidence but with respect to others of more serious nature. The board, in its summary of the evidence, seems to have construed every act of one defendant as evidence against the others.

In the field of procedure an error, in my opinion, has been committed which should be sufficient to warrant the granting of the petition. The board has admitted into the record secret informations or reports of secret agents who have been identified only by numbers. As the guard did not specify the evidence on which it based its findings, it is quite likely that it was influenced by these reports or took them into consideration. This is repugnant to the concept of due process or fair trial to which the petitioners had a right. Every person regardless of nationality is entitled to due process and fair hearing in any proceeding which involve life, property, or pursuit of happiness. Constitutional safeguards of this right extend to all persons, not merely to nationals or citizens of the country.

Writ denied.

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