

OLIVER THEATRE

TODAY MATINEE, 2:30
TONIGHT, 8:15

The Time, The Place, The Girl

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50 Others
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FRIDAY NIGHT, MARCH 8.
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By A. P. Lawrence

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and 7:00 to 10:30 p. m.

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COMPROMISE WITH JAPAN.
(Continued from page 1.)

by express terms a right to better treatment than is accorded to Japan with reference to matters covered in the treaty, so we cannot lawfully accord them better treatment by applying a different rule of construction to treaties with them containing the same terms. In other words, we cannot do by indirection what we cannot do directly. If we could, the most favored nation clause amounts to nothing.

In our treatment of European nations we have in our treaties with them construed rights of residence to mean the right to send their children to the same public schools as the children of American citizens attend. Whether this is wise or not may be open to question. But there can be no question that we have considered the right to send their children to the public schools as incident to the right of residence. Such being the construction adopted and acted upon during more than a century, we are not now at liberty to adopt a different rule of construction with reference to Japan, particularly while we adhere to the old rule with reference to other nations.

But it is urged that the Japanese are of a different race and that therefore it is unwise to allow their children to attend the same schools as white children. Whether or not it is advisable to allow children of different races to attend the same schools is, perhaps, an open question. Arguments against it could therefore have been legitimately urged when the treaty was being negotiated or before the Senate when the treaty was awaiting ratification. But it certainly does not have the appearance of candor or fairness to urge them as a sufficient excuse for breaking our faith with a nation with whom we have contracted in the most solemn form. Contracts are not something to be thus lightly set aside simply because some one sees what they conceive to be a new light.

It may be that the ethnic argument furnishes a sufficient reason for modifying the existing contract. But the proper body to judge of this is not the legislature of California, but a joint conference of the representatives of Japan and the United States. If to such a body the facts appear to warrant a modification, there is then no legal objection to making such a modification or modifications as in their judgment seem necessary. But clearly, one party and a fortiori one not a party to a contract, is not the sole judge of what modifications shall be made in that contract.

But it is insisted by some that so far as concerns the rights of Japanese to attend the public schools of California, no contract exists, because the United States has no power to make a contract affecting this subject. This raises the question of the extent of the treaty-making power of the Federal Government.

The constitution of the United States vests in the President and Senate the treaty-making power, without limitation. As it nowhere defines what is meant by the term "power to make treaties," it is fair to suppose that the framers of the constitution had in mind the treaty-making power as it then existed in England. If this supposition is correct, there can be no doubt as to the power of the Federal Government to make the treaty in question. If legal, it is "the supreme law of the land" and the act of the legislature of California interfering with its fulfillment is unconstitutional.

But even if this supposition is incorrect, and the framers of the constitution did not intend to confer upon the Federal Government the power to make treaties to the same extent as was possessed by the British Government, certain it is that it has from the beginning of its existence been exercising the right to make treaties containing the most favored nation clause, nor has its right been questioned. It was, therefore, entirely natural that Japan should conclude that the Federal Government was not exceeding its powers by inserting the most favored nation clause in this treaty. While each nation is supposed to know the constitutional powers of the branch of the government with which it is dealing, was not Japan amply warranted in concluding from this long acquiescence in the exercise of the power that we would not seek to escape our obligations to her by denying the power of the Federal Government to make treaties containing so common a provision as the most favored nation clause?

The question of the power of the Federal Government to make treaties containing the most favored nation clause will have to be answered by the Supreme Court of the United States. The existence of the power is too vital to the conduct of our foreign relations to remain unanswered. It is, therefore, unfortunate that the compromise will probably result in the present case being dropped instead of being carried to the Supreme Court for decision.

If the Federal Government has the power to make such treaties, it follows that it has the power to enforce them, even tho certain of their provisions may be objectionable to some section of the country. Any other view would be tantamount to holding that unanimous consent of all sections of the country to the provisions of a treaty is necessary in order that a treaty may be enforceable. This could never have been the intention of the framers of the constitution. The weakness of the government under the articles of confederation in the conduct of foreign relations was one of the strong incentives toward the formation of a new constitution, and it is unreasonable to suppose that the framers of that instrument did not intend to confer such power upon the new government as would remedy what was admittedly a defect in the old government.

In order to avoid forcing the issue, California has agreed to admit the Japanese children into the public schools on condition that Japanese coolies not already here shall be excluded from this country. This satisfies the labor organizations, and it was they who were responsible for the act excluding the Japanese children from the public schools. It also satisfies Japan, as the amendment to our immigration laws will be general in terms and hence will not wound the pride of the Japanese and will

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