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## As It Was in the Beginning

## AS IT WAS IN THE BEGINNING

*By J. W. KELLEY of the Denver Bar*

**I**T IS difficult to find any person in these days who cannot explain exactly what the Constitution of the United States means. Lawyers, editors, preachers, politicians all modestly admit their ability to discern the precise meaning of its every phrase. Not in a generation has any public man confessed he was in any doubt about its exact significance. All those who profess to so clearly fathom its meaning fortify their opinions, in contradicting others equally positive, by reference to what those who lived in the days when the Constitution was being formed and adopted, and first amended, said it meant.

It is disconcerting to the student of the Constitution to find that the men who stood nearest to the desk on which the final draft was written were immediately at variance over its meaning, and especially the extent of the powers granted the Executive by that great instrument. To Thomas Jefferson, then in France, was submitted a draft of the finished work. He professed to find at once an omission so vital that it was necessary to pass ten amendments, suggested by Jefferson, to correct the error into which the framers had fallen. Afterward President Jefferson was for two terms the Chief Executive under the completed instrument. He should be excellent authority on the extent of the executive power under the Constitution; but he proved not to be. When the Louisiana Purchase was completed he wrote:

"The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our own. The executive in seizing the fugitive occurrence which so much advances the good of the country has done an act beyond the Constitution."

This naive confession by Jefferson of the void character of his own acts was written only fifteen years after the Constitution was adopted. The Federalists had assailed Jefferson and threatened to impeach him for what they said was a flagrant violation of the fundamental law in paying 15 million dollars to France for the Louisiana Purchase. The famous X. Y. Z. disclosures by John Marshall were still fresh in the public mind and it was believed an act of indemnity by Congress would be necessary to protect the President.

Then Chief Justice John Marshall, twenty years later, in deciding the case of *The American Insurance Company, et al. vs. David Canter, 1st Peters 511* (involving our right to acquire Florida in 1819), hit upon a meaning that Jefferson and the outraged leaders of Marshall's own party had failed to perceive. He declared:

"The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties: consequently that government possesses the power of acquiring territory either by conquest or by treaty."

When such high authorities disagree, who shall decide?

Like the words of the ancient oracle the utterances of the weird sisters in *Macbeth*—not forgetting the scriptures—the precise meanings of the provisions of the great "Layman's Document" seem to be subject to as many interpretations as there are different minds to examine them.

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#### AMERICAN BAR ASSOCIATION

1140 North Dearborn St.

CHICAGO, ILLINOIS

Chicago, Illinois.—The American Bar Association announced today that John W. Guider of Washington, D. C., has been reappointed by President Arthur T. Vanderbilt as Chairman of the association's Standing Committee on Communications. Mr. Guider has been a consistently active member of this committee for several years, and chairman since 1933.

This committee has been one of the hardest working groups in the association. Since the first committee on the subject was appointed in 1929, its annual reports have been among the most thorough and illuminating ever submitted to the association. During the past year, this committee has started on an ambitious program in original research in the laws dealing with the electrical transmission of intelligence. Other regular features in the work of this committee have included cooperation with congressional groups dealing with legislation in this field, and representing the association at international conferences involving governmental regulation of radio, telegraph, and related businesses.

The other members of the committee are Edwin M. Borchard, member of the faculty of Yale Law School, an outstanding student of international law, who has held numerous public positions of responsibility; Clyde L. Hester, of Jackson, Mississippi; Milford Springer, member of the Federal Communications Commission, Washington, D. C.; and Bethuel M. Webster, of New York City.