

**A DIGEST OF THE LAW OF
PRACTICE UNDER THE
JUDICATURE ACTS AND RULES
AND THE CASES DECIDED**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649479306

A Digest of the Law of Practice Under the Judicature Acts and Rules and the Cases Decided by
W. H. Kelke

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

W. H. KELKE

**A DIGEST OF THE LAW OF
PRACTICE UNDER THE
JUDICATURE ACTS AND RULES
AND THE CASES DECIDED**

A DIGEST
OF THE
LAW OF PRACTICE.

A DIGEST
OF THE
LAW OF PRACTICE
UNDER THE
JUDICATURE ACTS AND RULES,
AND THE
CASES DECIDED
IN THE CHANCERY AND COMMON LAW DIVISIONS,
FROM NOVEMBER, 1875, TO AUGUST, 1880.

BY
W. H. HASTINGS KELKE, M.A.,
OF LINCOLN'S INN, BARRISTER-AT-LAW.



LONDON:
STEVENS & HAYNES,
Law Publishers,
BELL YARD, TEMPLE BAR,
1880.

PREFACE.

THE *raison d'être* of this little book is twofold—(1) it aims at recording all the important practice cases in the Chancery and three Common Law Divisions decided with reference to the Judicature Acts down to the present moment in the briefest possible language, (2) of doing so in immediate connection with the wording of the Acts and Rules themselves. It is in no sense a “setting out” of the Acts and Rules, of which many portions have been omitted, some as purely transitional and now already of little more than antiquarian interest, some as simply directing official routine, others as not having given occasion for any judicial interpretation, and as perhaps not being likely to do so. After one half-decade of experience of the working of the Acts, it has seemed to the writer that the time had arrived for an endeavour to consolidate the gist of the decisions along with the portions they interpret, adding further an epitome of just so much of other parts of the Acts and Rules as would form a connected whole. In condensing the combination, it is not

anticipated that any real difficulty can arise from the frequent use of such abbreviations as e.g. "generally" = "unless the Court or a Judge shall otherwise order," or "on terms" = "on such terms as to costs or otherwise as to the Court or a Judge shall seem fit," &c.; especially as it is assumed that the reader possesses some edition of the Acts and Rules.

The various subjects interlace at so many points, that it is perhaps impossible to frame a perfectly scientific division; but it will be seen that the main lines of an action have been followed, various miscellaneous points being left to the concluding part. One innovation will be noticed, in that counter-claim is made to follow directly after claim, most of the regulations as to the one obviously applying, *mutatis mutandis*, to the other. The writer is not so sanguine as to suppose that he has been always successful in his attempt at condensation and abbreviation. Where he has failed, he trusts that the notes will at least serve as an index for the correction of his errors. Where and so far as he may have succeeded in presenting a brief *primâ facie* view of the joint product of statute and "judge-made" Law as at this moment existing, he is well aware that in this, perhaps even more than in any other branch of Law, the infinite possibilities of variation and combination, together with that large discretion which the elasticity of the Acts and Rules allows to the Court,

must prevent any chance of a finality where all points shall be "concluded by authority."

The writer desires to acknowledge his obligations, as to the earlier cases, to the various editions of the Acts, particularly those of Mr. Wilson and Sir W. T. Charley. It is hoped that the book will be found complete as regards cases reported in the Law Reports down to the present moment. And it has been attempted to combine with these all the more important cases given in the Weekly Notes, and in various other Reports.

W. H. H. K.

77, CHANCERY LANE,
November, 1880.

CONTENTS.

	PAGE
TABLE OF CASES	xi
PART I. PRELIMINARY. THE ACTS	1
" II. WRIT TO CLOSE OF PLEADINGS	12
" III. EVIDENCE, &c.	47
" IV. TRIAL TO EXECUTION	57
" V. APPEAL—COSTS	74
" VI. MISCELLANEOUS	89
INDEX	101

•

•

•

•

•

•

•

•

•

•

•

•

•

•

•

•