nothing but "the case," and the judgment which was given on it. And if the case be well stated, that is to say, if every thing material is given, and everything irrelative is thrown off—and but *one* question be raised by it,—that case and the record of what judgment was given on it *is* a report, and so far as a precedent only is wanted, is a perfect report. As respects the ground of the judgment, I have already said that such a report is seldom satisfactory; in a difficult case never quite so.

The argument of counsel is not an essential part of a report. If the case be one not difficult, and if the opinion be full and have a certain form it is not so at all. Indeed if the opinion follows largely in the line of argument presented by the counsel on whose side the judgment is given, the argument of *such* counsel may often be well dispensed with; for on its reproduction by the judge its interest and value is merged in the higher and more authoritative argument of the bench. But without doubt an abstract of a good argument adds greatly to the value of the report. As respects the judgment passed, it fixes its true value; for it shows that it has been well aided, or not so well aided; and that whatever a subsequent objector to it may think *he* first suggests, has already been suggested and considered and disposed of,—or not suggested, considered and disposed of—before him. If in its form the opinion have a responsive cast, and be replying to what was said at the bar it is almost indispensable for understanding such opinion that the argument be stated, and if the argument at the bar be truly answered, the report of it at once expounds and exalts the effort of the judge. It is a vast mistake to suppose that the office of a judge is rendered less great by an able discussion at the bar before him. The permanent fame of judges has been, I fancy, generally in proportion to the ability of the contemporary bar. The opinions of Mansfield are still celebrated throughout England and America; yet in the very volumes where they are recorded and from which their fame yet radiates, we have constantly preceding them, and reported with a fullness and fidelity such as is given by scarce any other reporter, the arguments of Dunning, Fletcher Norton and James Wallace, in which little that the court decided—though it was a court pre-eminent for innovation—was not previously suggested and enforced.*

Superior, of course, to any argument is the higher office of the judge; higher in its dignity, greater in its requirements, moral and intellectual at once. It is there that we look for the exhibition of JUDGMENT, the rarest, finest, least seldom betrayed of the faculties of mind. "To say of any man that he excels by *that* attribute is to award perhaps the highest praise that can be bestowed. It is above invention. It is beyond eloquence. It is more than logic. In every employment, and every condition of life, public and private, deliberative and executive—and most of all in the judicial, the ascendency of judgment over talent, wit, passion, imagination, learning, is evinced at once by the rarity of the endowment, and by the superiority which it is certain to confer on its possessor."*

These three divisions, therefore,—divisions such as I have said may be found in the reports I have named—are, I apprehend, the fundamental characteristics of every report which is at once good and *elegant*.

The statement, indeed, can have but one characteristic. It must contain every fact material to the point adjudged; and it must exclude every one irrelative.

The argument may have divers qualities. It may be full or it may be curt. Cases may be cited only or their language may be given in part at large. It may have the dryest form of legal argument or may pass occasionally in the regions of forensic eloquence.

The opinion too has various characteristics, as various as the forms of presenting legal truth; but not *one* form more. Sometimes it states facts, but it states them not narratively—for this would be to state the case anew—but states them as argument; for though facts are not argument the collocation of facts is sometimes the strongest form that argument can take: skilfully to state a case is often conclusively to decide it. Sometimes the opinion is abstract purely; no part of the case being imported into it at all; though all its facts are reasoned *upon*. But whether facts be stated or whether dogmas only be delivered, the opinion in the reporters whom I have named, assumes, I think, generally speaking, the form of argument only, or where facts are re-stated, or arguments rehearsed, they are so re-stated or rehearsed only as "inducement," and to prevent what might seem too great abruptness; or to revive in the reader's mind a point which is now to be considered, and so lead in with more distinctness and grace the reasoning which is to follow.

I have taken as illustrations only two reporters and those English ones. Others, both English and American—for we have had as good reporters in America as England has ever had, and in my opinion some better—will readily suggest themselves to every reader. But the divisions I mention, and the style I have described, is common I believe to all reporters who are good ones; and better divisions and style can no man devise.

Now wherein and why do the American reports—those I mean of the present day—very frequently differ in their divisions and style from these?

This we will consider in a future number.—*Legal Intelligencer.*

* I am happy, since writing what is above, to see my general idea confirmed by a thinking writer in the Boston *Law Reporter*. Vol. 25, p 693.

* Horace Binney Wallace.

DIVISION COURTS.

THE LAW AND PRACTICE OF THE UPPER CANADA DIVISION COURTS.

(*Continued from page* 204.)

Towards the further protection of persons for acts done by them in execution of the statute, the following privileges are granted by law:

I. *As to tender of amends before action brought*—It is enacted by section 194 of the Division Courts Act, that if sufficient tender of amends be made before action brought, the plaintiff shall not recover, and

II. *As to payment into court*—By the same section, that if a defendant, after action brought, pays a sufficient sum of money into court, with costs, the plaintiff shall not recover in any such action.

Sections 13 and 14 of cap. 126, Con. Stat. U. C., if they do not apply to division court officers (see sections 1 and 20 of the same act, and see also *McPhatter* v. *Leslie et al.* 23 U. C. Q. B. 578) contain the fullest provisions both as to tender of amends *before*, and payment into court *after* action brought, and the bare provision in sec. 194 of the Division Courts Act may at least be worked out with some regard to the analogous provision in chapter 126, but the provisions of this Act do not vary or overrule the provisions