upon the character or relations of the parties to the controversy. A very common fault is found in the failure to take into consideration *all* the facts upon which the legal duty or liability arises. But perhaps the most difficult function of the lawyer is to determine which of the facts are essential and which are non-essential; to eliminate the latter and to show, against the possible contention of the opposing counsel, their immateriality. The facts of a given cause may be and often are numerous. But many, perhaps a majority of cases turn upon one or two controlling points. Study and careful discrimination are necessary to select from the mass of facts those that are controlling: to select from the storehouse of the law the legal principles which justly apply to the controlling facts. In the study of a cause, after the controlling facts are ascertained, I have found it to be a most useful general inquiry to make; *What is the intrinsic justice of this case?* If it is clear that right and justice are on my client's side, I can prognosticate with great confidence a favorable result. But if they are on his adversary's side, and I have to rely upon the provisions of an uninterpreted statute, or upon some reported case which I suppose to be in point, the reliance generally and I may add rightfully fails.

If the *right and justice* of a case are clear, the counsel may feel assured that, with rare exceptions, right and justice are coincident with the true principles of the law applicable to it. If a legal principle is asserted, which is subversive of justice, it is quite certain either that there is no such principle, or what is, perhaps, the more common error, the principle, though sound when rightly applied, is inapplicable to the case in hand.

The careful study of a cause such as I am insisting upon as being absolutely essential, will necessarily lead the counsel to form his theory of his cause, and so far as he may, the theory of his adversary. This done, the work of formulating the brief may be begun, and here the first step is the *statement of the case.*

Not only the first step, but the most important. Not only the most important, but it may perhaps surprise the legal reader to add *the most difficult.* As a result of large observation and experience, I feel obliged to say that comparatively few lawyers understand the art of stating a cause to the court. Some have no plan at all. Some begin in the middle. Others fail to discriminate between what is essential and what is immaterial. Others are verbose and rambling. You here perceive the value of what is said above as to the necessity of a careful study of your cause, and the formation of your theory of it. The statement of the case consists in the regular and logical exposition of the material facts, and, where necessary, showing that other facts are immaterial. The importance of a concise but complete statement of a cause is found in the fact that perhaps nine cases out of ten are practically decided when the case is stated; and your case may be lost if you have omitted the controlling of even material facts in your presentation of it.

The late Mr. Justice Curtis of the Supreme Court of the United States was remarkable for his felicity and power of condensed but complete and accurate statements. His reported judgments on the Circuit and in the Supreme Court may be profitably studied, as examples of the mode of properly stating a cause, as well as for their legal learning, and as models of judicial style.

Having stated the facts of the cause, the next question is, *What is the law of the cause?*

And here the first impulse of the average lawyer is, "Is there any case in point?" If the lawyer proceeds carefully he will first inquire and make sure whether there is any constitutional provision, federal or state, applicable to the case stated. Next, whether there is any statutory provision applicable to it, and whether and how it has been judicially construed. Failing to find his case controlled either by constitutional provisions or statutes, his next inquiry should be what legal duty or liability arises on this state of facts—in other words, what are the true legal principles applicable thereto? To determine this, he naturally and properly has recourse to his books—Elementary Treatises and Reports. Text books of acknowledged merit may of course be used. There is, however, much difference in their value; too many are worthless and unreliable. A statement of the law by writers such as Sugden, Byles, Benjamin, Mr. Justice Lindley, Chancellor Kent, and some other authors