

accept in settlement, and that he at no time and in no way exceeded his instructions. From a careful perusal of all the evidence given by Mr. Fraser, I cannot gather anything inconsistent with this being the true position. The Master, of course, had the advantage of seeing Mr. Fraser as a witness. He was examined before him. He has not expressed any opinion that Mr. Fraser's evidence is not worthy of credit. Without treating Mr. Fraser's statement in regard to what took place, when he says "In none of my interviews did I offer to pay an amount," as the veriest quibbling, I must read it as a denial of having ever made an offer to settle such as is alleged by plaintiff. As I have said, it is manifest that Mr. Osler's view of what took place and of the scope of Mr. Fraser's authority was very different. I could not, however, find that it has been established that the agreement alleged in this action was in fact made between Mr. Osler and Mr. Fraser, without discrediting Mr. Fraser's testimony, or concluding from the surrounding circumstances that he must be mistaken. Upon the material before me there is not enough, in my opinion, to justify a judicial officer disposing of a motion under Rule 603 in acting upon either of these views of Mr. Fraser's evidence.

If it were incontrovertibly established that a settlement had in fact been concluded, the argument, that, though not within the real, it was within the apparent, scope of Mr. Fraser's authority to make such an arrangement, would be very formidable. As it is I find it unnecessary to consider that phase of the matter.

Neither does the testimony, in my opinion, sufficiently establish ratification by defendant of a settlement, if made without authority, nor such acquiescence as would estop him in this action from denying that such settlement was in fact made, or that it was binding upon him. Mr. Fraser swears that during the interval between 28th February and 30th March, when all idea of settlement was explicitly repudiated, he had, in answer to several telephone communications from Mr. Osler, informed that gentleman that he had not seen Mr. Edey, and that he was ill. This robs the lapse of time between the letter written by Mr. Osler on the 28th February, stating in terms his acceptance of what he understood to be Mr. Fraser's offer to settle for \$1,500, and Mr. Fraser's letter of 30th March declaring all negotiations off, of much of the significance and effect which it would otherwise have.