cords with that which the parties understood was, and acted upon as, the character and extent of their agreement.

In this view of the case, it is unnecessary to consider whether the contract in this respect, being limited to such sums of money as the defendant might think reasonable, is one enforceable at law.

I would allow the appeal, and restore the judgment directed to be entered at the trial.

MOSS, C.J.O., and MACLAREN, J.A., agreed in the result.

MIDDLETON, J., dissented, for reasons stated in writing.

He was of opinion (1) that there was an agreement capable of being enforced—a contract to pay something, the exact amount being left to the defendant's determination; the defendant had not the right to refuse to pay any sum at all, and, upon his taking this attitude, the duty of the Court is to ascertain how much the defendant, acting in good faith, ought to have paid for this purpose; referring to Loftus v. Roberts, 18 Times L. R. 532; Broome v. Speake, [1903] 1 Ch. 586, 599, [1904] A. C. 342; Bryant v. Flight, 5 M. & W. 114.

He was further of opinion (2) that the defendant's liability was not limited to the duration of the minor malady; and (3) that the plaintiff did not release the defendant.

He was in favour of dismissing the appeal with costs, with a variation in the terms of the judgment below directing a reference.

HIGH COURT OF JUSTICE.

BOYD, C. NOVEMBER 11TH, 1910.

RE STANDARD MUTUAL FIRE INSURANCE CO.

McDONALD & HENRY'S CASE.

Fire Insurance—Winding-up of Mutual Insurance Company — Contributories—Mutual Policy—Liability on Premium Note—Refusal of Assured to Pay Extra Rate for Increased Hazard—Refusal of Company to Continue Insurance unless Paid — Cancellation of Policy—Correspondence—Estoppel—Statutory Conditions 3, 19—Notice.

Appeal by McDonald & Henry, a mercantile firm, from an order of an Official Referee, in a winding-up, placing their names on the list of contributories.