The Magistrate has not expressed any opinion on the evidence adduced in support of this ground of defence, but has held that "If an apprentice is bound to a master who turns out to be good for nothing, or to have no business, he will not be justified in leaving the service, but he must sue the master on his covenant for not teaching." This extract from the Magistrate's judgment is founded on a passage in Austin's Law of Apprentices. The Magistrate has consequently held that a neglect or refusal by a master to teach his apprentice the trade, or one of the trades he has covenanted to teach the apprentice, does not justify the apprentice leaving the master's service, and is no answer to an action by the master on the covenant to serve, and that the covenants are independent covenants, and that the only remedy for failure is an action against the master for damages for breach of his covenant to teach, and he has given judgment for the respondent for £52 damages, and £7 13s. costs. Now, although in a sense the covenants are independent covenants, they are in reality dependent each upon the other. The covenant to serve is intimately connected with the covenant to teach. If a master refuses to instruct his apprentice, then a substantial consideration for the covenant to serve fails. So also, if an apprentice refuses to obey the orders of the master and to faithfully serve him, the substantial consideration for the covenant to teach fails. This is well illustrated in two cases, in which the consequences of the breach—in the one case of the covenant to teach, and in the other of the covenant to serve—were defined. In Ellen *v.* Topp (1851, 8 Exch. 424; 20 L.J. Ex. 241) the Court of Exchequer (Pollock, C.B., and the Barons Parke, Alderson, Platt, and Martin) held that in a deed of apprenticeship with the usual covenants the obligation to serve depends upon the corresponding obligation to teach, and if the master is not ready to teach in the very trade which he has stipulated to teach, the apprentice is not bound to serve, and that, to the particular covenant to serve, the relative duty to teach is directly a condition precedent, and that where the master had covenanted to teach the apprentice three trades he was bound to teach him each of the three trades, and the failure to teach him one justified the apprentice in refusing to serve as an apprentice. In Raymond *v.* Minton (1866, L.R. 1 Ex. 244) the position was the converse one — namely, an action against the master for refusal to teach—and the Court held that the willingness of the apprentice to learn was a condition precedent to the master's teaching him, and, therefore, that the master was absolved from his covenant to teach if the apprentice refused to learn.

The Supreme Court of Victoria decided Fletcher *v.* Buzolich (1881, 7 V.L.R. (L.) 348) upon the same principle, and held (Stawell, C.J., Higinbotham and Williams, JJ.) that, in an indenture of apprenticeship, the covenant to teach and the covenant to serve and remain in the service are so far dependent one on the other that failure or incompetence of the master to teach during a substantial part of the apprenticeship affords an excuse in law to the apprentice for quitting the service. In that case the apprenticeship was for five years: the apprentice served three years, and then left the service without leave, and refused to return, as he alleged that the master had neglected to teach him the trade to which he was apprenticed. The master sued the apprentice's father upon his covenant in the deed of apprenticeship, and it was contended, as it has been contended in the present case, that the only remedy was a cross-action against the master for damages; but the Court refused to accept such an argument, and followed Ellen *v.* Topp and Raymond *v.* Minton.

These cases are also referred to as authorities in Eversley's Domestic Relationships (1906 ed., p. 884), Pollock on Contracts (1902 ed., p. 430), and Macdonald on Master and Servant (1883 ed., p. 182). And the principle upon which they were decided is, in truth, one of common-sense. It would be monstrous, as was observed by Mr. Justice Williams in Fletcher *v.* Buzolich, if an apprentice was bound to serve the whole term of his apprenticeship to one who refused to teach him his trade, and that his only remedy should be an action for damages at the end of his term. It is but justice that, if a master will not teach the apprentice, the apprentice shall be at liberty to leave the master's service and enter the service of one who will instruct him.

I am therefore of opinion that the Magistrate was wrong in refusing to consider this branch of the defence to the action.

The appeal is not only on the law, but, being upon the facts as well, it is in the nature of a rehearing, and I have therefore to consider whether upon the very full notes of evidence taken by the Magistrate, and forming part of the case on appeal, there is sufficient to justify me in determining the question of fact, or whether the parties should be put to the expense of a new trial. There is practically no conflict of evidence. The term of apprenticeship was four years. The apprentice served two years, and then left the service. He was to be taught horse-shoeing, engineering, and general smithing, and all things incident thereto "in such a manner as the master now or shall hereafter during the said term use or practise the same." The respondent had a smithy and an engineering-shop, and carried on three businesses of a horse-shoer, a blacksmith, and an engineer. As regards the horse-shoeing and smithing, the apprentice appears to have been left, as I fear is often the case of apprentices, to gain a knowledge of these trades without any real instruction on the part of the defendant. He was kept at "striking" and cleaning up the shop for the first six months, and pulling off shoes and dressing the feet for another six months. During the second year he was engaged nailing on shoes, striking, and cleaning up the shop, and, although the respondent gives the boy a good character for industry, the boy was not able at the end of the second year to shoe a horse. Now, the respondent had covenanted not only to teach the boy horse-shoeing and smithing, but also engineering. The lax way in which he appears to have carried out his responsibilities to the boy in reference to shoeing and smithing is, although not the breach of covenant actually alleged, of importance in considering whether the respondent has broken his covenant in relation to his undertaking to teach the boy engineering. The term of apprenticeship was for four years only: two had passed, and the boy had not been taught even one of the three trades covered by the covenant. The boy evidently complained to the respondent, for the respondent himself says, "I was to teach him horse-shoeing and general smithing. Cannot say if he did the former at the end of the second year. I told him I could not be responsible to