teach him engineering." He was not, in fact, taught any engineering, nor during the two years he was with the respondent was he allowed to do any work connected with engineering, and the respondent manifestly considered he was under no obligation to give him instruction in engineering.

It has been suggested in argument that, notwithstanding the respondent's repudiation of his responsibility to teach the boy engineering, the boy should not have left, but should have continued on during the balance of the term in the hope that the respondent would nevertheless teach him that trade; but, in my opinion, the fact that one-half of the term had already elapsed, and that the boy had not even during that period been taught to shoe a horse indicates that the respondent did not intend to teach him as he had covenanted to do, and the boy was not, in my opinion, bound to waste another two years in the hope that the respondent would change his mind in reference to his repudiation of any liability to teach him engineering.

Under section 161 of "The Magistrates' Courts Act, 1893," an appeal on matter of fact consists of a copy of the proceedings and of the Magistrate's notes of evidence, with power to the Supreme Court to take further evidence, either orally or by affidavit, or to rehear the whole case. The Magistrate's notes of evidence are very full, and were evidently carefully taken, and neither party has sought to place any further material before this Court. I have no doubt that the full facts of the case are before me, and that I ought not to put the parties to the further expense of a new trial, but that I ought to determine the appeal upon the Magistrate's notes of evidence, drawing the proper inferences from such evidence.

In my opinion, the undisputed facts of the case, and the proper inference to be drawn from them, leads to one conclusion only—namely, that the respondent not only did not properly instruct the apprentice during the first two years of his apprenticeship in the trade of engineering, but repudiated his obligation to do so at all, and that therefore the respondent has refused to perform, and clearly indicates his intention of continuing to refuse to perform, his covenant, at least so far as his obligations to teach engineering to the apprentice were concerned. The apprentice was not, therefore, bound to continue in the service of the respondent, and the facts proved before the Magistrate on this branch of the case disclose a sufficient defence to the action.

There is one feature in the case to which I should refer. The apprentice absented himself from the respondent's employment about the end of April, 1904. On the 19th May, 1904, Mr. Caplin, the respondent's solicitor, wrote to the appellant inquiring the reason of his absence, and the appellant wrote three letters to the respondent, in the last of which, dated the 2nd June, 1904, he stated that his son (the apprentice) had broken down in health, and that the doctor had advised him to seek employment elsewhere; but he did not justify his absence on the ground of any breach of covenant of the respondent. Dr. Sloan had, in fact, advised the appellant that the boy was suffering from cardiac weakness and nervous prostration, and that he was on no account to return to work. The refusal to continue to serve during the remaining period of apprenticeship was based, therefore, on the illness of the apprentice, an illness which, I agree with the Magistrate, has not been proved to have been of so permanent a nature as of itself to justify a rescission of the contract of apprenticeship: Boast *v.* Firth (L.R. 4 C.P. 1). But, although the repudiation by the respondent of his responsibility to teach the boy was not then raised as a matter of justification for the boy's refusal to serve, the evidence has established that the fact of such repudiation and non-instruction by the respondent existed, and the refusal to serve can be supported upon any ground which in fact existed at the time of the alleged breach of covenant by the apprentice in refusing to continue his service. Where a party to a contract refuses to perform it, and a ground sufficient in law to justify such a refusal exists at the time, although the refusal is put on another and insufficient ground, the party refusing may support his refusal on the sufficient ground: Spottiswoode *v.* Barrow (5 Exch. 110), Cussens *v.* Skinner (11 M. and W. 161), Willetts v. Green (3 Car. and K. 59), and Boston Deep-sea Fishing Company *v.* Ansell (39 Ch. Div. 329) (cases relating to master and servant); and Cowan *v.* Milbourn (L.R. 2 Ex. 230), and Pearse *v.* Stevens (24 N.Z. L.R., C.A. 357; 6 G.L.R. 439) (cases on contracts generally). This principle of law applies to the present case.

The failure to give at the time the reason subsequently taken as justification for the refusal to perform the contracts may, no doubt, be a circumstance of importance if the evidence is contradictory, but not where there is no conflict of evidence: and there is none here.

The appeal must be allowed, with £10 10s. costs, and judgment entered in the Court below for the appellant, with costs on the Magistrate's Court scale, as on a claim for £124, the amount sued for in the action.

MAY, 1907.

Wellington.—(Shops and Offices Act): For failing to close his shop on the half-holiday a storekeeper was fined £1, with 7s. costs. Defendant kept a post-office, but sold goods on the half-holiday mentioned.

JUNE, 1907.

Napier.—(Shops and Offices Act): A milk-vendor was fined 10s., and costs 7s., for employing an assistant for more than fifty-two hours per week. On three other charges—(1) employing an assistant after 1 p.m. on the weekly half-holiday; (2) employing an assistant before 4 a.m.; and (3) for supplying milk after 1 p.m. on the weekly half-holiday—defendant was convicted, without costs.

Wellington.—(Scaffolding Inspection Act): A firm of builders was convicted, with costs 9s., for failing to give notice of intention to erect scaffolding. This was the first case under this Act. Three other firms were each fined 10s., with costs £1 18s. 6d., for same offence.