other prisoner Gibbons, joined in the present indictment, and whether they were acting in concert. I thought it desirable to let the prisoner Morris have the benefit of either of the defences, and for that purpose to let the questions of fact go to the jury upon the plea of not guilty, and to reserve the question of law, under the aforesaid section 45, for the opinion of this Court. The prisoner Gibbons was acquitted and the prisoner Morris was convicted.

If the Court should be of opinion that a conviction for the assault, at the instance of the injured person, under sec. 45, affords a defence in law to an indictment for manslaughter resulting from that assault, then a plea of not guilty to be entered, otherwise the prisoner Morris to be called up for judgment at the next assizes.

G. Browne for the prisoner. No counsel appeared on the other side.

[MARTIN, B., mentioned *Salvi's case*, reported in the Old Bailey Sessions Papers, 1857, vol. 46, p. 884, the nature of which is stated in the following judgment; and KELLY, C.B., said the question turned on the meaning of the words "for the same cause," in 24 & 25 Vic. cap. 100, sec. 45.] *Reg.* v. *Walker*, 2 Moo. & Ry. 44; *Reg.* v. *Elrington*, 1 B. & S. 688, 10 W. R. 13; and *Reg.* v. *Stanton*, 5 Cox, C. C. 324, were referred to.

Cur. adv. vult.

KELLY, C.B.—In this case I have the misfortune to differ with my learned brethren, who are of opinion that the conviction ought to be affirmed. The prisoner was charged before the magistrates with an assault, under the 24 & 25 Vict. cap. 100, at the instance of the party aggrieved, and now deceased. Timothy Lymer was convicted and sentenced to imprisonment with hard labour, and has undergone that sentence. The assault, the unlawful act with which he was charged, is the same assault, and one and the same act as that which caused the death of Lymer, and of which he has been convicted under the present indictment. I think therefore that the case comes within the precise words of section 45 of the 24 & 25 Vic. cap. 100, which provides that in such a case "he shall be released from all further or other proceedings civil or criminal for the same cause." It is true that the offence is now charged in other language, and that which before the magistrates was described as an assault is now described as manslaughter; but it is one and the same act, and the cause of the prosecution before the magistrates and the cause of this prosecution are one and the same cause. The case therefore comes within the letter as well as the spirit of the Act of Parliament, and I think that to sustain this conviction would be directly to violate the maxim or principle of the law, "*nomo debet vis vexari* (here we might say *puniri*) *pro eâdem causâ*." Cases may indeed be suggested in which there might be a failure of justice, as where an assault should have been treated lightly by a magistrate and upon conviction a slight sentence passed, and yet, from the subsequent death of the party assaulted, the offence might amount to murder; but such a case must be rare and exceptional, and I think we ought to presume that the magistrates will in all cases under this or any other Act of Parliament do their duty, and as, where the charge is made at the instance of the party aggrieved, it may also be presumed that the whole of the evidence would be fully brought before the magistrates, and upon conviction an adequate punishment inflicted accordingly, I do not think it was the intention of the Legislature or consistent with natural justice, that the accident of the subsequent death of the party should subject the accused to a repetition of the trial and the punishment. *Salvi's case* is clearly distinguishable. There the prisonor was indicted for the murder of one Robertson, and pleaded a plea of *autrefois acquit*, the acquittal having been upon an indictment for wounding with intent to kill. It was clear that this acquittal might have been pronounced upon the ground of the jury having negatived the intent to kill, and yet that the prisoner might well be guilty of the murder without an intent to kill the individual murdered, as if he had shot at another man, but unintentionally killed Robertson. The plea therefore of *autrefois acquit* was in that case properly overruled. Here, however, the prisoner has been tried, convicted, and punished for the very same offence in all its parts, though under a new name, as that for which he is now indicted and again convicted; and it seems to me that to allow this conviction to stand, is to punish a man twice for the very same cause in violation of the before mentioned maxim, and of the express declaration of the Act of Parliament. I think therefore that the conviction ought to be quashed.

MARTIN, B., said the question was whether the suffering the imprisonment imposed by the justices was a defence to this indictment. He agreed that *Salvi's case* was not in point. The meaning of the words "the same cause," in the 45th section, was the same cause as that on which the justices had adjudicated; and, in his opinion, a new offence arose when this man died.

BYLES, J.—I am of opinion that under statute 24 & 25 Vic. cap. 100, sec. 45, the prior conviction of the assault affords no defence to the subsequent indictment of manslaughter, the death of the deceased having occurred after the conviction, but being a consequence of the assault. The form and intention of the common law pleas of *autrefois convict* and *autrefois acquit*, show that they apply only where there has been a former judicial decision on the same accusation in substance, and where the question in dispute has been already decided. There has, in the present case, been no judicial decision on the same accusation, and the whole question now in dispute could not have been decided; for at the time of the hearing before the magistrates, whether the assault would amount to culpable homicide or not, depended on the then future contingency whether it would cause death. The case of *Reg.* v. *Salvi*, argued before the Lord Chief Baron Pollock and my brothers Martin and Willes, if not precisely in point, is nevertheless a strong authority for this view of the law. But reliance is placed on the words of the statute (24 & 25 Vic. cap. 100, sec. 45) "for the same cause." It is to be observed that that statute does not say for the same act, but for the same cause. The word "cause" may undoubtedly mean act, but it is ambiguous, and it may also, perhaps with greater propriety, be held to mean "cause for the accusation." The cause for the present indictment comprehends more than the cause in the former summons before the magistrate, for