defeat the ends of justice by saving the guilty from the legal consequences of their wrongdoing."[12]

No general rule can be drawn from the cases; a court of summary jurisdiction must be guided by the decisions, if any, delivered within its own province. However, the cases are unanimous upon the point that, when alternative methods are provided, the accused has nothing to say about which is to be followed. "Parliament has in effect enacted," said the Chief Justice of British Columbia,[13] "that the offence may be prosecuted either by indictment or summarily, and it is therefore impossible to say that the accused may dictate the course to be taken by the prosecution." And in the *Denis* case, the Court, after pointing out that the magistrate got his jurisdiction from the Code itself and not from the consent of the accused, observed that, "Consent of the accused is not only not necessary, it should not even be asked for."

Yet, if to give the accused the right to choose in such cases would be to "read out of the section" the alternative of summary conviction, there is, perhaps, just as great a danger of reading out the other alternative if the justice, at all costs, insists upon his own jurisdiction. It is obvious, from the mere fact that trial by indictment is provided, for example, for the unlawful possession of opium, that it is contemplated that such cases will sometimes come before judge and jury "which, after all, is the regularly recognised mode."[14]

What considerations, then, should govern the choice? It seems only fitting that the request of the accused for a trial by jury should be, in the view of the justice, a circumstance tending to influence him against proceeding summarily. Apart from that, some guidance is to be found in the *McNabb* case, already cited:

"It may also be said that there could be no prejudice to public interest in a trial by indictment. But there is at least the question of trouble and expense. I think the Justice is the person to say whether the case justifies the incurring of such trouble and expense. Parliament has undoubtedly said that a Justice is a proper and fit person to try the offence created by the statute and I cannot see that, in the face of that and when there is no condition of consent attached, the accused has any right to question the wisdom of Parliament. He must, I think, submit to the tribunal created by Parliament with power to try him provided that tribunal in its discretion decides to do so.

I do not think that the magistrate accepted without question the preference of the prosecutor. He merely said that that circumstance had some weight with him. If that meant that the prosecutor's desire that the less severe penalty should be imposed then I think, within limitations, the magistrate could, not improperly, take that into account. If, however, it meant that the prosecutor thought the chances of conviction were better before the magistrate than upon indictment then of course the desire of the prosecution should not have been regarded but I see nothing to justify an inference that this was what the magistrate had in mind. In any case

[12]Rex v. Denis, 49 C.C.C. 8.
[13]Rex v. Chin Mow, 42 C.C.C. 394.
[14]Rex v. Van Koolberger, 16 C.C.C., at p. 231.