

and even false statements. There may be cases where that is necessary in the interests of justice to enable them to secure the evidence, and the fact that the officer has resorted to subterfuge may not cast discredit upon the evidence which he discovers by means thereof. But, in my opinion it is a different matter where the false statements are made, not for the detection of crime committed but for the purpose of inducing its commission, and inducing its commission in order that the person making these statements may be able to prefer a charge for the offence committed at his solicitation. The evidence of such a witness must, in my opinion, be scrutinized with great care. (Reference to *Connor v. People* (1893), 36 Am. State R. 300). . . .

"Every case must be determined in the light of its own particular facts, which will not be without bearing on the credit that is to be given to the testimony of the witnesses called. I have, however, no hesitation in saying that where the zeal or otherwise of an officer of the law leads him to make false statements to secure the commission of an offence in order that he may be able to prosecute the offender, his evidence must be weighed in the light of the possibility that the same motives might have a tendency to induce him to colour his testimony in order to secure a conviction."

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THE foregoing jurisprudence has been set down for the information of peace officers generally and in defence of their actions when called upon to do undercover work. These cases well illustrate how truly difficult the policeman's position is. On the one hand the courts acknowledge that the undercover method is necessary, that as a means of securing evidence it is valid; without it, to repeat the phrase of Martin, J.A.<sup>11</sup>, the law would become "mischievous laughing stock or dead letter". On the other hand, both the court and the public look askance at the police for using the method.

What this all means is that the policeman must render service to the public whose servant he is, however unpopular the manner of rendering that service

may be. Where his duty is concerned, he has no alternative; his function is to enforce the law, and his course of action is clear.

Before using the test purchase method to secure evidence the investigator ought to acquaint himself as fully as possible with all the conditions under which the undercover man will be working. He should insist on two main points:

- (1) That the undercover man (when it is necessary to employ an outsider) be reliable and of unimpeachable character.
- (2) That evidence obtained by the test purchase method be, wherever possible, corroborated.

The very fact that such a person's background and credibility will be considered when the evidence is weighed is a primary reason why extreme care should be exercised when choosing an undercover man. Besides being trustworthy, he should be well disposed to follow instructions to the letter.

To employ one who has a criminal record or whose personal integrity is not above reproach is to invite harmful criticism, for some courts denounce the practice of using undesirable characters in police work. Consider, for example, the strong words of Hopkins, C.C.J.<sup>14</sup>,

"The evidence for the prosecution depends entirely on two spotters, Coffee and West, who swear they purchased a case of beer from the defendant. . . . These men cannot be called independent witnesses, their living depends on getting convictions. Their reputation as a class shows they are unreliable. In my opinion men who will accept occupations of this kind are quite as unreliable as accomplices and it is unsafe to convict on their evidence where they are flatly contradicted. Especially in this case where they induce the commission of the offence they are accomplices and their reputations are such that I cannot conceive of the License Department employing them had they known what they had to admit on their examination, and if their character is such that they should not be employed why ask a conviction on their evidence."

<sup>14</sup>R. v. *Rodgers* (1926), 4 D.L.R., 609 (Ont.), at p. 610.