The subjoined remarks of Robertson, C.J.O.[1], are authority for this contention:

"He was obeying orders that, as a police officer, he was bound to accept from his superior officer and loyally to execute as in the interest of law and order. He is not to be stigmatized as one who, shamelessly, will lie and deceive whenever it suits his purpose to do so, because of his efforts to ascertain the manner in which the business of Drayton Motors was carried on in so far as prices were concerned. It is not a fair statement of his position to say that he was trying to procure a breach of the law. He was trying to act as an ordinary citizen would act who desired to buy a used car from a dealer. Any flaws in his acting may fairly be assigned to the fact that, by training, he is a policeman and not an actor, rather than to a propensity to lie."

When a case investigated by the test purchase method comes before the court, the prosecution is permitted to disclose that it received certain information but not what that information was. The suspicious train of circumstances that led to the discovery of the evidence upon which the charge is based cannot be revealed as it forms no part of the *res gestae*, is regarded as irrelevant. In other words the court has jurisdiction to look only at the charge before it, and under the rules of evidence, the police witness is prohibited from divulging the reasons why it was necessary to employ the test purchase method. Is it any wonder then that the court often has little sympathy for evidence secured in this way?

Doubt is usually cast upon such evidence because of the way it was obtained and it sometimes does not receive the weight it deserves. Defence counsel of course makes much of possible abuses liable to spring from the test purchase method. He leaves no stone unturned to show that it strikes at the very principles which underlie British justice. One must believe that his pleas have had their intended effect, for some judges and magistrates object strenuously to false representations made by a detective while using the method. There is, however, no more justification for this attitude than there is to distrust the evidence of a plain clothes officer who has captured a man evading arrest, on the grounds that the officer should have been in uniform—and of course there is no valid reason for drawing a distinction between a detective or other peace officer in plain clothes and a peace officer in uniform.

The mere fact that a policeman acts anonymously, that he does not reveal his identity before associating with the illegal transaction to which the suspect is an alleged party, hardly makes him an *agent provocateur*. The courts, however, refer to him as such without defining the term or even differentiating between the actions implicit in its original meaning and those of a peace officer engaged in the discharge of his legal duty.

The peace officer has sound reasons for arguing that under the circumstances he should not be classed as an *agent provocateur*. The courts themselves make this clear. For surely the fact that they accept his evidence is proof of its admissibility, of its legality. The appeal courts as well as the lower courts have accepted such evidence with little or no reservation. By so doing they show in a very definite way that the test purchase method is acceptable police procedure.

Support for this view is to be found in these remarks of Gillanders, J.A.[2]:

"The use of police spies or *agents provocateur* or, to use a term of opprobrium employed at times by persons critical of the practice, 'stool pigeons', has long had a well recognized and useful place in the enforcement of certain laws. It is well recognized that certain laws could not be adequately enforced and the frequent and notorious breach thereof prevented without the employment and use of police spies."

We may be sure that these same courts would roundly criticize the evidence of anyone acting as an *agent provocateur* within the original meaning of the term. No self-respecting peace officer would

[1] *R. v. White* (No. 2), 84 C.C.C. at p. 144.
[2] *R. v. White* (No. 1), 84 C.C.C., Part 2, p. 132.