

Vol # 1

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REPORTER'S TRANSCRIPT

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VIRGINIA:

IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

W. O. LUCY and J. C. LUCY

-18-

A. H. ZEHMER and IDA P. ZEHMER

HEARING ON

July 30, 1953

H. JAMES EDWARDS AND ASSOCIATES
COURT REPORTERS
1223-31 CENTRAL NATIONAL BANK BUILDING
RICHMOND 19, VIRGINIA

Filed
AUG 18 1953
N. J. Edwards
clerk

*Print from
page 16 thru
page 13 ✓*

1 Taken on
2 July 30, 1953

PLEADINGS COPIED HERE IN DEPOSITIONS

3 BILL OF COMPLAINT Page 1 thru 5
4 ANSWER 6 thru 10
5 ANSWER 11 thru 14

I N D E X

(Listed Chronologically)

	<u>DIRECT</u>	<u>CROSS</u>
9 Walter Huskey	18	19
10 Paul McClelland	20	23
11 Rennie W. Bridgman	28	29
12 Mrs. A. H. Zehmer	31	49
13 A. Hardy Zehmer	58	
14 Albert Carr	89	92
15 W. O. Lucy	93	107
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18
19 Exhibit 1, noted on Page 45
20 Exhibits 2, noted on Page 81
21 Exhibits 3 and 4, noted on Page 84
22 Exhibit 5, noted on Page 85
23 Exhibit 6, noted on Page 100

24 Reported by:
25 H. Jas. Edwards

Do not print pages 1-15

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF DINWIDDIE COUNTY,

3
4 W. O. Lucy
5 Dinwiddie, Virginia, and
6 J. C. Lucy
7 Lawrenceville, Virginia

Complainants

8 v.: BILL OF COMPLAINT

9 A. H. Zehmer
10 McKenney, Virginia
11 Ida P. Zehmer
12 McKenney, Virginia

Respondents

13 To the Honorable J. G. Jefferson, Jr., Judge of said Court:

14 Your Complainants respectfully represent:

15 1. That on the 20th day of December, 1952, the
16 said A. H. Zehmer was seized and possessed, in fee simple, of
17 the following described real property, to wit:

18 "All that certain tract or parcel of land situate in
19 Darvills Magisterial District, Dinwiddie County, Virginia,
20 containing 471.6 acres, more or less, according to a plat
21 thereof recorded in the clerk's office of said county in Plat
22 Book No. 2, at page 80A, and being in all respects the same
23 identical property conveyed A. H. Zehmer, as A. Hardy Zehmer,
24 by deed of J. H. Ferguson and wife, dated November 20, 1943,
25 and recorded in said clerk's office in Deed Book 69, at
page 167;"

2. That the said tract of land is commonly known,

1 designated and identified, throughout Dinwiddie County, as
2 "The Ferguson Farm", and was being operated by the said
3 A. H. Zehmer on the 20th day of December, 1952.

4 3. That on the 20th day of December, 1952, the
5 said W. O. Lucy offered the said A. H. Zehmer the sum of
6 \$50,000.00 cash for the above described Ferguson Farm,
7 complete with the personal property and farming equipment
8 of A. H. Zehmer located thereon, and used in connection with
9 the operation of said farm, provided only the said A. H.
10 Zehmer had good and sufficient title to the said property;

11 4. That the said A. H. Zehmer, on the day, month,
12 and year aforesaid, and in a restaurant owned and operated
13 by the said Zehmer, in McKenney, Virginia, did accept the
14 offer of W. O. Lucy, as aforesaid, and, at the request of
15 W. O. Lucy, and to avert any possibility of controversy over
16 the terms or subject matter of the purchase, said A. H.
17 Zehmer did reduce the agreement to writing, and said A. H.
18 Zehmer and Ida S. Zehmer, his wife, at the time and place,
19 aforesaid, did sign, execute and deliver the said agreement
20 to the said W. O. Lucy, which agreement is in the
21 handwriting of respondents and is as follows:

22 "We hereby agree to sell to W. O. Lucy the
23 Ferguson Farm complete for \$50,000.00, title satisfactory
24 to buyer. A. H. Zehmer. Ida S. Zehmer"

25 5. That relying upon the agreement aforesaid,

1 (which is in the possession of W. O. Lucy and will be
2 offered in evidence and as an exhibit herein), and the
3 purchase which he had made, your complainant, W. O. Lucy,
4 employed B. Hunter Barrow, an attorney at law, of Dinwiddie,
5 Virginia, to examine the title of said property, which
6 examination was duly made by the said attorney, who reported
7 to the said W. O. Lucy, on December 31, 1952, that he did not
8 find any liens or transfers binding or effecting the Ferguson
9 Farm, and that he was of opinion that the respondents could
10 convey the same by proper deed.

11 6. That, accordingly, W. O. Lucy notified the
12 respondents, in writing, on January 2, 1953, that he was
13 ready to pay the purchase price for said property, and asked
14 that they advise him when they would be ready to close the
15 transaction;

16 7. That again, on January 27, 1953, complainant
17 wrote A. H. Zehmer requesting that he and his wife have
18 prepared and executed a good and sufficient instrument
19 conveying to the complainants the said property, and further
20 that the purchase price therefor would be paid by certified
21 check or cash, at the respondent's option;

22 8. That complainant, J. C. Lucy, of Lawrenceville,
23 Virginia, is interested in said property and this suit by reason
24 of the fact that on December 22, 1952, W. O. Lucy advised
25 the said J. C. Lucy of his purchase of the Ferguson Farm.

1 complete for \$50,000.00, and said parties agreed that they would
2 own the property jointly, and that title thereto would either
3 be taken in their joint names, or that after deed was
4 executed by the respondents to W. O. Lucy, the latter and his
5 wife would transfer an undivided 1/2 interest in the property
6 to the said J. C. Lucy, it being further understood that the
7 said J. C. Lucy would pay \$25000.00 of the agreed purchase
8 price of \$50,000.00, and pay 1/2 of the costs incident to the
9 title examination and recordation of the necessary instrument
10 of sale.

11 9. That W. O. Lucy, and W. O. Lucy and J. C. Lucy,
12 jointly and severally, have always been willing and ready
13 to comply with the terms of the said agreement, made with the
14 respondents, and following the title examination, as
15 aforesaid, they applied to the respondents and offered to
16 pay the agreed purchase price upon the delivery of a
17 sufficient deed to them for the said property, yet the said
18 respondents refused, and still refuse, to comply with the
19 said agreement on their part.

20 10. Complainants are, always have been, and stand
21 ready at this time, and offer to pay into open court the said
22 sum of \$50,000.00, and otherwise, fully perform their part of
23 the said agreement, whenever the said respondents will make
24 and deliver to them, or to W. O. Lucy, a good and sufficient
25 deed for the property aforesaid.

1 Therefore, complainants pray:

2 a. That the said respondents may be decreed
3 specifically to perform the said agreement entered into with
4 W. O. Lucy, as aforesaid, and to make a good and sufficient
5 deed to W. O. Lucy, (or to W. O. Lucy and J. C. Lucy) for the
6 said described property, complainants being ready and
7 willing, and are hereby offering specifically to perform
8 the said agreement on their part, and, upon the respondents
9 executing a proper conveyance for said property, pursuant
10 to the terms of said agreement, to pay to the respondents
11 the said purchase money, (\$50,000.00), in cash.

12 b. That complainants may have such other and
13 general relief as may be incident to the relief herein
14 prayed for, or as equity may require.

15 RESPECTFULLY SUBMITTED.

16 W. O. LUCY
17 DINWIDDIE, VIRGINIA
18 J. C. LUCY
19 LAWRENCEVILLE, VIRGINIA,
20 COMPLAINANTS
21 BY COUNSEL

22
23 _____
24 /s/ A. S. Harrison, Jr.
25 Attorneys for Complainants
 Lawrenceville, Virginia

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF DINWIDDIE COUNTY.

3
4 W. O. LUCY and
5 J. C. LUCY,

Complainants

6 -vs-

7
8 A. H. ZEHMER and
9 IDA P. ZEHMER,

Respondents

10 * * * * *

11
12 Comes now the respondent, A. H. Zehmer, and for
13 answer to the said bill of complaint filed against him and
14 another in the Circuit Court of Dinwiddie County by W. O.
15 Lucy and J. C. Lucy, answers and says:

16 1. The allegations of Paragraph 1 of the bill of
17 complaint are admitted to be true.

18 2. This respondent was operating the parcel of
19 land described in Paragraph 1 of the bill of complaint on
20 December 20, 1952. As to whether the said tract of land is
21 commonly known, designated and identified throughout
22 Dinwiddie County as "the Ferguson Farm" this defendant has
23 no knowledge, and neither affirms nor denies the same, but
24 calls for strict proof.

25 3. This respondent admits that on the 20th day
of December, 1952 W. O. Lucy offered this respondent the sum

1 of \$50,000.00 cash for what he called the Ferguson Farm, but
2 this respondent considered the offer as made in jest and did
3 not regard it as a serious offer.

4 4. This respondent denies that he ever accepted
5 any offer from the said W. O. Lucy to sell to him for
6 \$50,000.00 his farm complete with the personal property and
7 farming equipment located thereon and used in connection
8 with the operation of said farm. This respondent, on the
9 contrary, avers that as a joking matter, thinking at the time
10 that the said W. O. Lucy was jesting, and both the said
11 W. O. Lucy and the respondent having had several drinks,
12 that this respondent did write out the memorandum quoted in
13 Paragraph 4 of the bill of complaint and did induce his wife
14 to sign it. This respondent further says, however, that he
15 never delivered that memorandum to the said W. O. Lucy, but
16 the said memorandum was picked up by the said W. O. Lucy,
17 who read it, put it in his pocket, and then attempted to
18 offer this respondent the sum of \$5.00 to bind the bargain,
19 which this respondent then and there refused to accept, and
20 for the first time realizing that the said W. O. Lucy was
21 serioud, assured him that he had no intention of selling the
22 farm, that the whole matter was a joke, and the said W. O.
23 Lucy left the premises insisting that he had purchased the
24 farm and your respondent at the same time insisting that he
25 had not sold the farm.

1 5. Concerning the allegations of Paragraph 5 of
2 the bill of complaint, this respondent has no knowledge and
3 neither affirms nor denies the same, but calls for strict
4 proof.

5 6. This respondent admits that the said W. O. Lucy
6 by letter dated January 2, 1953 gave notice that he was ready
7 to pay the purchase price for said property, and this respondent
8 immediately replied to said letter, reciting the fact that he
9 had never agreed to sell the property and did not intend to
10 sell it.

11 7. This respondent admits that on January 27, 1953
12 the said W. O. Lucy wrote him another letter requested a deed
13 to the property, which letter was also replied to by this
14 respondent stating that he had not made any agreement to sell
15 the farm in question, and did not intend to sell it.

16 8. Concerning the allegations of Paragraph 8 of the
17 bill of complaint, this respondent has no information and
18 neither affirms nor denies the same, but calls for strict
19 proof.

20 9. Concerning the allegations of Paragraph 9 and
21 10 of the said bill of complaint, this respondent has no
22 knowledge.

23 10. This respondent hereby expressly denies all
24 allegations of said bill of complaint not herein expressly
25 admitted to be true. This respondent expressly denied that

1 he ever entered into any agreement with W. O. Lucy to sell to
2 him the real estate and personal property described in the
3 bill of complaint, and expressly denies that the
4 memorandum in writing in the possession of the said W. O.
5 Lucy was any memorandum of a contract made between the
6 plaintiff and this respondent, and avers that the said
7 memorandum was neither signed, executed or delivered to the
8 said W. O. Lucy as a memorandum of any agreement between the
9 parties.

10 And now having fully answered, this respondent
11 prays to be hence dismissed, together with his reasonable
12 costs in this behalf expended.

13 A. H. ZEHMER

14 By Counsel

15
16
17 /s/ Morton G. Goode

18
19 /s/ Wm. Earl White

20 Attorneys for Defendants
21

22 We, certify that copy of the above answer was this
23 day mailed to Mr. Emerson D. Baugh, Attorney, and Mr.
24 Albertis S. Harrison, Attorney, Lawrenceville, Virginia,
25 they being attorneys of record for the plaintiff's in this

H. JAMES EDWARDS AND ASSOCIATES
COURT REPORTERS
CENTRAL NAT'L BANK BUILDING
RICHMOND, VIRGINIA

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cause.

Given under our hands this 31st day of March, 1953.

/s/ Wm. Earle White
Wm. Earle White

/s/ Morton G. Goode
Morton G. Goode

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF DINWIDDIE COUNTY.

3
4 W. O. LUCY and
5 J. C. LUCY,

Complainants

6 -vs-

A N S W E R

7
8 A. H. ZEHMER and
9 IDA P. ZEHMER,

Respondents

10 * * * * *

11
12 The answer of Ida P. Zehmer to a certain bill of
13 complaint filed against her and another in the Circuit Court
14 of Dinwiddie County by W. O. Lucy and J. C. Lucy.

15 This respondent, saving and reserving unto herself
16 all just exceptions to said bill of complaint, for answer
17 thereto or to so much thereof as she is advised it is
18 material or necessary that she should answer, answers and
19 says:

20 1. The allegations of Paragraph 1 of the bill of
21 complaint are true.

22 2. The real estate described in Paragraph 1 of the
23 bill of complaint was being operated by A. H. Zehmer on the
24 20th day of December, 1952, but whether said tract of land is
25 commonly known, designated and identified throughout Dinwiddie

1 County as "The Ferguson Farm" this respondent neither affirms
2 nor denies, but calls for strict proof of such allegation.

3 3. It is true that W. O. Lucy stated to A. H.
4 Zehmer in the presence of this respondent on the night of
5 December 20, 1952 that he would pay \$50,000.00 cash for a
6 farm belonging to the said A. H. Zehmer, but since the said
7 W. O. Lucy and A. H. Zehmer were both somewhat under the
8 influence of whiskey, and since the conversation between
9 them indicated that there was an argument between them as to
10 whether W. O. Lucy had \$50,000.00, this respondent did not
11 regard the offer made by the said W. O. Lucy as a serious
12 offer or one made with intention to enter into a contract.

13 4. It is true that this respondent signed a
14 memorandum prepared by the said A. H. Zehmer, copy of which
15 is filed with the bill of complaint as a part of Paragraph 4
16 thereof, but it is not true that this is a memorandum of any
17 agreement between the said A. H. Zehmer and this respondent
18 on the one hand and W. O. Lucy on the other, but on the
19 contrary, said writing was prepared as a joke in connection
20 with the discussion between the said A. H. Zehmer and
21 W. O. Lucy which your respondent did not regard as any serious
22 effort on the part of either to make a contract, and this
23 respondent affixed her name to the same to carry along what
24 she regarded as a joke and with no intention of making any
25 contract with the said W. O. Lucy. This respondent denies

1 that the said memorandum was signed, executed and delivered
2 to the said W. O. Lucy as any memorandum of agreement between
3 the parties. This respondent further states that the said
4 W. O. Lucy picked up the memorandum and when he offered the
5 said A. H. Zehmer the sum of \$5.00 to bind the bargain as he
6 stated, the said A. H. Zehmer immediately refused to accept the
7 \$5.00 and told the said Lucy that the whole matter was a joke,
8 that he had no intention of selling the farm, and this respon-
9 dent understood that it had been made clear to the said Lucy
10 that no contract had been entered into at any time between
11 the parties.

12 5. Concerning the allegations of Paragraphs 5, 6,
13 7, 8, 9 and 10 of the bill of complaint, this respondent has
14 no knowledge and neither affirms nor denies the same, but
15 calls for strict proof.

16 6. This respondent expressly denies all
17 allegations of the bill of complaint not herein admitted to
18 be true. This respondent for further answer to the said bill
19 of complaint expressly denies that she at any time ever
20 agreed to sell any property to W. O. Lucy for any price
21 whatsoever. This respondent further says that the said
22 W. O. Lucy never made any offer to this respondent of any
23 nature whatsoever regarding said property, and further avers
24 that neither the said W. O. Lucy nor A. H. Zehmer were in any
25 condition to make a contract on the evening of December 20,

1 1952 when this writing was prepared by the said A. H. Zehmer.

2 And now having fully answered, this respondent
3 prays that she be hence dismissed together with her
4 reasonable costs in this behalf expended.

5 IDA S. ZEHMER

6 By counsel

7
8
9 /s/ Morton G. Goode

10
11 /s/ Wm. Earle White

12 Attorneys for Defendants

13
14 We certify that a copy of the foregoing answer
15 was this day mailed to Mr. Emerson D. Baugh, Attorney, and
16 Mr. Albetis S. Harrison, Attorney, Lawrenceville, Virginia,
17 they being attorneys of record for the plaintiffs in this
18 cause.

19 Given under our hands this 31st day of March, 1953.

20
21 /s/ Wm. Earle White
22 Wm. Earle White

23 /s/ Morton G. Goode
24 Morton G. Goode

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

3
4
5 W. O. LUCY and J. C. LUCY (Complainants)

6
7 -VS-

8
9 A. H. ZEHMER and IDA P. ZEHMER (Respondents)

10
11 The depositions of Walter Huskey, and others, taken before
12 H. James Edwards, a Notary Public of the State of Virginia
13 at Large, by agreement of counsel, on July 30, 1953, at
14 the Courthouse in Lawrenceville, Virginia, beginning at
15 10 o'clock A.M.; said depositions herein taken to be read
16 as evidence in behalf of the complainants.
17

18 APPEARANCES

19 Mr. A. S. Harrison, Jr., and Mr. Emerson D. Baugh, counsel
20 for the complainants;

21 Mr. Morton G. Goode and Mr. Wm. Earle White, counsel for
22 the respondents.
23
24
25

*Print all
Pages 16-17*

1
2
3 STIPULATION: It is stipulated by counsel
4 for all parties that any objections that they
5 may have to the testimony, questions or answers,
6 can be made upon hearing of this case before the
7 Court, and to the same extent and for the same
8 purpose as if made at this hearing of the taking
9 of the testimony. Further that all signatures
10 might be waived.

11 It is further stipulated that if C. C.
12 Johnson of Alberty, Virginia, a dealer in real
13 estate in Brunswick and Dinwiddie Counties were
14 called as a witness he would testify that he
15 was familiar with the Ferguson Farm and with the
16 values of the real property in Dinwiddie and
17 Brunswick Counties, and that in his opinion
18 \$50,000.00 was a fair and reasonable price for
19 the Ferguson Farm owned by A. H. Zehmer as of
20 December 20, 1952.

21
22
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25

1
2
3 WALTER HUSKEY, a witness introduced in behalf
4 of the complainants, first being duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. BAUGH:

8 Q Mr. Huskey, where do you live?

9 A McKenney, Virginia.

10 Q What is your age?

11 A 36.

12 Q What is your occupation?

13 A Service station operator.

14 Q Do you know Mr. W. O. Lucy?

15 A I do.

16 Q How long have you known him?

17 A I would say 10 or 15 years.

18 Q Did you see him on the night of December 20, 1952?

19 A Yes, sir.

20 Q Where did you see him?

21 A At my station, he bought gasoline there.

22 Q Bought gasoline at your service station?

23 A Yes, sir.

24 Q Did you wait on him personally?

25 A Yes, sir.

1 Q What time of night was this?

2 A This was between 7 and 8 o'clock, somewhere in
3 between there, I couldn't say exactly.

4 Q What was Mr. Lucy's condition, if you were able to
5 observe, with reference to sobriety or intoxication?

6 A Well, he was normal as far as I could see. He drove
7 up there and then drove away. I didn't see anything wrong with
8 him.

9 Q Had he had a drink of whiskey or intoxicants as
10 far as you could tell?

11 A I couldn't say. I couldn't say that he had or he
12 had not. If he had I couldn't tell it.

13
14 CROSS EXAMINATION.

15 BY MR. GOODE:

16 Q Mr. Huskey, you didn't see Mr. Lucy after that?

17 A No, sir.

18 Q And you are not certain as to the minute, you
19 don't know whether it was nearer seven or eight o'clock?

20 A No, sir, it was between 7 and 8 o'clock, though,
21 but I couldn't say the minute.

22 Q You don't know where Mr. Lucy went from there?

23 A No, sir.

24 Q You don't know whether he had a drink or whether
25 he had not had a drink?

1 December 20?

2 A Yes, sir.

3 Q About what time of night did you see him?

4 A Somewhere around 8, anywhere from 8:30 to 9 o'clock.

5 Q Were you at work at the time?

6 A Well, sir, I just quit work. Somewhere around
7 a little after eight. Quit work a little later, closing
8 up.

9 Q Where is the garage of Mr. Zehmer located with
10 reference to a dining room and service station?

11 A I would say about 200 feet.

12 Q All there on the same lot?

13 A All on the same lot.

14 Q Did you see Mr. Zehmer, Mr. A. H. Zehmer, on this
15 same night?

16 A Yes, sir.

17 Q Did you see Mr. Lucy and Mr. Zehmer together?

18 A Yes, sir.

19 Q Did you hear any conversation between Mr. Lucy
20 and Mr. Zehmer?

21 A No, all I heard was Mr. Lucy had asked him
22 something had he sold the old Ferguson Place. I didn't
23 hear it too plain. That is all the conversation that I
24 heard.

25 Q You didn't hear any conversation with reference

1 to any deal on the Ferguson place?

2 A No, sir.

3 Q Had Mr. Zehmer been at home all day that day?

4 A Well, I will tell you, he comes and goes right
5 sharply. I wouldn't say he was at home all day, or would
6 be gone. I couldn't keep up with him.

7 Q Had he been around the place that night for some
8 time?

9 A Yes.

10 Q What was Mr. Lucy's condition at the time you saw
11 him with referenceto intoxication?

12 A Just normal. Just spoke and I spoke to him. I
13 mean, as far as any intoxication I couldn't tell.

14 Q Where did you first see Mr. Lucy?

15 A At the lunchroom.

16 Q At the lunchroom?

17 A Yes.

18 Q Who was with you at the time?

19 A Well, Mrs. Zehmer and I walked in the same time.

20 Q You and Mr. Zehmer and Mrs. Zehmer?

21 A No, just Mr. Zehmer.

22 Q Where had you come from at that time?

23 A From right at the garage and service station all
24 combined right there together.

25 Q From the garage and service station?

A Yes, sir.

1 Q Was Mr. Lucy in the lunchroom when you all walked
2 in or did he come in later?

3 A He was there when we came in.

4 Q Was that the time and place of the remark "Have you
5 sold the Ferguson Farm yet?"

6 A Yes, thereat the lunchroom.

7 Q What was Mr. Zehmer's condition with reference to
8 sobriety or intoxication?

9 A We had had one drink, but as far as that goes
10 wasn't neither one of us out of the way. In a normal
11 condition.

12 Q Hadn't been but one drink?

13 A One drink, to my knowing.

14 Q Did Mr. Zehmer appear to have had more than one
15 drink?

16 A No, sir, I wouldn't say so. He could have been
17 drinking and he could not have.

18 Q In other words, would you consider either of the
19 parties, Mr. Lucy or Mr. Zehmer, as having been intoxicated
20 at 8:30 or 9 o'clock on the night of December 20?

21 A No, sir.

22
23 Q CROSS EXAMINATION

24 BY MR. GOODE:

25 Q You had been working at the service station there

1 I believe?

2 A At the garage.

3 Q That is you said a short distance from the
4 restaurant?

5 A Yes.

6 Q That is the place owned by Mr. Zehmer?

7 A Supposed to be, yes, sir.

8 Q You had seen Mr. Zehmer before you all went to
9 the restaurant?

10 A Yes, sir.

11 Q You say you had had one drink. You wouldn't say
12 that you and Mr. Zehmer didn't take more than one drink,
13 would you?

14 A Yes, sir, I would.

15 Q You would?

16 A I don't never take but one drink.

17 Q You don't know whether Mr. Zehmer had had any
18 drinks before?

19 A No, sir, I hadn't seen him.

20 Q You don't know what he took after you all got to
21 the restaurant?

22 A No.

23 Q You saw Mr. Lucy when you got to the restaurant.
24 You and Mr. Zehmer went there about the same time, didn't
25 you?

1 A Yes, sir.

2 Q But Mr. Lucy was there?

3 A Yes, sir.

4 Q You don't know what, if anything, Mr. Lucy had had
5 to drink before you saw him, do you?

6 A No, sir, he talked normal, and spoke normal.

7 Q Did you stay there or did you leave right away?

8 A I ordered a sandwich and went back to the service
9 station, came back and ate the sandwich and as far as that
10 goes I didn't hear anything going on.

11 Q You don't know anything about the conversation
12 with reference to sale of the farm except the question as to
13 whether he sold it?

14 A That is right.

15 Q You don't know anything about the drinking, no
16 drinking was done in the restaurant while you were there?

17 A None that I seen, no, sir.

18 Q You don't know what was drunk there after you went
19 out?

20 A No, sir.

21 Q This December 20th, do you remember the day of
22 the week it was?

23 A It was on a Saturday as well as I remember.

24 Q It was a Saturday night before Christmas?

25 A I believe it was.

1 Q You were closing up?

2 A Yes, sir.

3 Q And you and Mr. Zehmer had a drink?

4 A Yes, sir.

5 Q Do you remember whether you gave him the drink or
6 he gave you the drink?

7 A He gave me the drink.

8 Q Did he have a bottle?

9 A Well, I will tell you, he had already had one drink
10 that somebody left him, and he asked me would I care for a
11 drink. I told him I was right tired and wore out and didn't
12 believe I did, and then I changed my mind. He said, "Here
13 you can have the drink," he said a gentleman left him that
14 this evening, "and if you want to have it you can have it."

15 Q What kind of bottle was it?

16 A It was not in a bottle, it was in a paper cup.

17 Q It was in a paper cup?

18 A Yes, sir.

19 Q Do you know whether it came out of a bottle?

20 A No, sir.

21 Q Do you know what gentleman it was that left it?

22 A No, sir, I do not.

23 Q Did Mr. Zehmer say that he and this gentleman had
24 been drinking?

25 A No, sir.

1 Q You didn't know about that?

2 A No, sir.

3 Q You don't say they weren't, that the gentleman
4 didn't leave the drink for him and he gave it to you?

5 A That is right.

6 Q And then you went from there to the restaurant,
7 and you don't know what took place in the way of drinking
8 there?

9 A No, sir. Anything was drunk it was drunk after
10 I left.

11 Q Did you see Mr. Lucy and Mr. Zehmer both there in
12 the restaurant?

13 A Yes, sir.

14 Q You don't know what conversation took place or
15 what drinking took place after you went out?

16 A No, sir.

17 And further this deponent saith not.
18

19 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.
20
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25

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2
3 RENNIE W. BRIDGMAN, a witness introduced in
4 behalf of the complainants, first being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BAUGH:

8 Q Where do you live, Mr. Bridgman?

9 A Seven miles from McKenney, west of McKenney.

10 Q You mean in Dinwiddie County?

11 A Yes, sir.

12 Q What is your age?

13 A 43.

14 Q What is your occupation?

15 A I am a farmer and deputy Commissioner of Revenue,
16 Dinwiddie County.

17 Q Are you familiar with the farm referred to in
18 Dinwiddie County as the Ferguson place?

19 A Yes, sir. It adjoins my farm, and that is what
20 I have known it as, the Ferguson Place, all my life. So
21 I imagine this is the right farm.

22 Q Is it generally known as the Ferguson Place in
23 the community?

24 A Well, I would say yes.

25 Q Who owned the Ferguson Place in December, 1952?

1 A As far as I know Mr. A. H. Zehmer.

2 Q Do you know how long he has owned it?

3 A No, I don't know. I imagine Mr. Zehmer bought
4 that place in 1942 or 1943, somewhere along in there, I
5 wouldn't say exactly which year, or whether it was either
6 of the years that I mentioned. But somewhere along in that
7 neighborhood, in the forties, I would say.

8 Q If you met a person on the highway at Dinwiddie
9 Courthouse who made inquiry about the Ferguson Farm, where
10 in Dinwiddie County would you have directed him, where would
11 you have directed him to go?

12 A I would have directed him to what I know as the
13 Ferguson Place, what I have known as the Ferguson Place,
14 which is seven miles west of McKenney on Route 40.

15 Q That is the place that adjoins your farm and is
16 now owned by Mr. Zehmer?

17 A Yes, sir.

18
19 CROSS EXAMINATION

20 BY MR. WHITE:

21 Q You have lived in that community all of your life?

22 A Born and raised there.

23 Q People in other sections of the county as far as
24 you know wouldn't be referring to this as the Ferguson
25 Place, this isn't the only Ferguson Place in Dinwiddie County,

1 is it?

2 A Well, I believe it is.

3 Q There are other farms owned and occupied by
4 people named Ferguson other than this one?

5 A I know of one more in the county that is not a farm,
6 I know of one man named Ferguson, not a farm. It may be,
7 and I don't know them, but this is the only Ferguson Place
8 that I know of.

9 Q Do you know Mr. Jack Ferguson?

10 A Yes, sir, -- no, I take that back, I don't know
11 him.

12 Q You knew there was such a person?

13 A I knew it was such a person.

14 Q In other words, he lived in Dinwiddie County?

15 A 75 acres of the farm I now own came off this
16 Ferguson place.

17 Q Do you call this the Ferguson Farm?

18 A No, sir, not now.

19 Q Isn't there a farm that is called the Ferguson
20 Farm up in the north end of the county about a mile or two
21 west of Wilson Depot?

22 A If it is, Mr. White, I don't know it.

23 Q You don't know it as the Ferguson Farm?

24 A No, sir.

25 Q You have no way of knowing whether people around

1 Wilson would refer to this as the Ferguson Farm, do you?

2 A No, sir, that is just my personal opinion there.

3 Q What you really mean is that people in that
4 neighborhood, that vicinity there, refer to this as the old
5 Ferguson Place?

6 A I would think so, I did.

7 Q Occupied by the Ferguson family over a period of
8 years?

9 A Yes, sir.

10 Q But that is purely a local proposition?

11 A As far as I know.

12 And further this deponent saith not.

13
14 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.

15
16
17
18 MRS. A. H. ZEHMER, called as an adverse witness by
19 Mr. Harrison, first being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HARRISON:

22 Q Will you please state your full name and residence
23 for the record?

24 A Ida P. Zehmer, McKenney, Virginia.

25 Q You are one of the respondents to this suit?

Mrs. Zehmer - Direct

32.

1 A Yes.

2 Q You are the wife of Mr. A. H. Zehmer?

3 A Yes, sir.

4 Q Does your husband own a farm in Darvills District
5 known as the Ferguson Farm?

6 A Yes.

7 Q You and your husband operate a combination service
8 station and restaurant?

9 A Yes.

10 Q At McKenney?

11 A Yes.

12 Q Were you in your place of business on Saturday
13 night, December 20, 1952?

14 A I was.

15 Q Do you recall that Mr. W. O. Lucy of Dinwiddie,
16 Virginia, came into the restaurant that night?

17 A Yes, sir.

18 Q Do you recall that Mr. Lucy and your husband had
19 a conference in regard to the Ferguson Farm?

20 A Well, I heard very little about that when he first
21 came in. I heard Mr. Lucy ask Mr. Zehmer if he had sold the
22 Ferguson Place. I was sitting in there reading, and when
23 Mr. Lucy came in, and I know him when I see him, and I didn't
24 have very much to say. He looked as though he had had
25 something to drink. He asked where Mr. Zehmer was.

Mrs. Zehmer - Direct

33.

1 Q He was looking for Mr. Zehmer?

2 A Yes.

3 Q You did hear him ask --

4 MR. GOODE: We would like to very sincerely
5 request that she be allowed to finish her answer.

6 A (Continued) And he asked me where Mr. Zehmer
7 was. I told him he was out on the court turning the lights
8 off. He would be back in a few minutes. I was inside there
9 reading the paper.

10 In a few minutes Mr. Zehmer came in, and he asked
11 him if he would like to have a drink. He said yes, that
12 he would. He took the bottle and handed it across the counter
13 to Mr. Zehmer. I judge it was about half full, and
14 Mr. Zehmer took a drink.

15 At that time I laid my paper down and went back
16 at the corner of the counter to help the waitress to clear
17 away her chores for the night. She was getting ready for the
18 next morning, filling sugar dishes and different things
19 like that. They were talking. I didn't pay too much
20 attention to what they were saying.

21 At one point I heard him say, "Have you sold the
22 Ferguson Farm?" And he said, "No, I haven't, and I don't
23 want to sell it."

24 Mr. Lucy said, "I bet you wouldn't take \$50,000.00
25 cash for that farm." Mr. Zehmer says, "You haven't got

Mrs. Zehmer - Direct

.34.

1 \$50,000.00 cash."

2 Mr. Lucy said, "I can get it." Mr. Zehmer said,
3 "Well, you probably could form a company and get that, but
4 you haven't got \$50,000.00 cash to pay me tonight."

5 And Mr. Lucy said, "Will you write out, will you
6 put in writing that you will sell me this farm?"

7 Mr. Zehmer tore the back off of a pad that was used
8 to take orders on in the restaurant, I don't know how many
9 drinks Mr. Zehmer had had then. I saw him take one drink.
10 He tore that pad off and wrote, "I agree to sell the
11 Ferguson Place to W. O. Lucy for \$50,000.00 cash."

12 Mr. Lucy says, "All right, get your wife to sign
13 it." Mr. Zehmer came back to where I was standing, and he
14 says, "You want to put your name to this?" I said, "No,
15 I am not going to sign it." He said in an undertone, he
16 said, "It is nothing but a joke." I signed my name to it.

17 Q Then the first thing you heard was an inquiry by
18 Mr. Lucy if he still had the Ferguson Farm?

19 A Yes.

20 Q Had not sold it?

21 A Yes.

22 Q So that was the first remark that was addressed
23 to your husband?

24 A Yes, sir.

25 Q Was this reference to the sale of the Ferguson Farm?

1 A Yes.

2 Q And if it were still owned by him and available.
3 Is that right?

4 A He asked him if he had sold the Ferguson Place.
5 They were the words.

6 Q Mr. Lucy offered him \$50,000.00 for the farm?

7 A Cash, yes, sir.

8 Q \$50,000.00 cash for the farm?

9 A Yes, sir.

10 Q Mr. Zehmer told him he would sell him that for
11 \$50,000.00 cash?

12 A I didn't hear him say that, I heard Mr. Lucy say
13 that, "Will you write it out?"

14 Q You did hear Mr. Lucy offer him \$50,000.00 cash?

15 A Yes.

16 Q For the Ferguson Farm?

17 A Yes, sir.

18 Q You knew what he meant by the Ferguson Farm, did
19 you not?

20 A Yes.

21 MR. GOODE: I know that Mr. Harrison does
22 not intend to lead the witness, but I would like
23 to have him ask questions without leading the
24 witness.

25 Q And you of course knew that \$50,000.00 cash

1 meant \$50,000.00 in cash, or its equivalent, to be paid by
2 Mr. Lucy to Mr. Zehmer for the property?

3 A That night.

4 Q Pardon?

5 A That night I judged he said I have \$50,000.00 cash
6 that I can pay you that night.

7 Q How long did they confer with reference to the
8 purchase and sale of this property?

9 A They talked pro and con. They argued, they laughed,
10 and drank, for a good while. I judge it was around 9
11 o'clock when he left.

12 Q You think he was there as long as an hour?

13 A Oh, yes.

14 Q You think he was there approximately an hour?

15 A Yes, sir. We generally close about quarter of
16 nine, and we closed later, we couldn't close.

17 Q So the conference leading up to the memorandum
18 of sale lasted approximately an hour?

19 A I should think so, yes.

20 Q You said at first Mr. Zehmer tore something off
21 a pad and wrote "I hereby agree to sell"?

22 A Yes, I noticed that has been changed to "we".

23 Q You know who changed it?

24 A No, I don't.

25 Q Do you mean it has been changed since you all

1 signed it?

2 A Well, it certainly wasn't changed that night.

3 Q But it was written "I" first?

4 A Yes, sir, yes indeed.

5 Q Was the "we" stricken through or written over the
6 "I"?

7 A I don't know about that, but I know it is "we".

8 Q You are confident it was written "I" first?

9 A Yes, sir.

10 Q You could not be mistaken about that?

11 A No.

12 Q Let me refresh your memory, because this is simply
13 an inquiry trying to get at what the facts are. Didn't
14 Mr. Zehmer write it out first "I agree to sell the Ferguson
15 Farm" and so forth, and then when Mr. Lucy protested and
16 stated that you would both have to sign, he tore that up,
17 or discarded it, and wrote it out as "we"?

18 A No, sir, he did not tear up one. That was the
19 original. He didn't. It was only one written.

20 Q You are positive that the "I" has been changed
21 to "we"?

22 A I am.

23 Q Are you positive that it was not done by Mr. Zehmer
24 and by someone else?

25 A Well, I see no reason why Mr. Zehmer should change

1 it. Didn't see him do it.

2 Q In any event you did sign along with Mr. Zehmer?

3 A When he told me what he did, I protested, he
4 said it was not any good, in an undertone he said, "It is
5 nothing but a joke."

6 Q That was in an undertone?

7 A Yes.

8 Q How far were you all away from Mr. Lucy?

9 A I imagine about that far (indicating in the room),
10 just as Mr. Lucy is sitting.

11 BY MR. WHITE:

12 Q Distance to where?

13 A To where Mr. Lucy is standing.

14 MR. BAUGH: We might estimate that about
15 10 feet.

16 MR. HARRISON: Approximately 10 feet.

17 BY MR. HARRISON: (Continued)

18 Q Were you behind the counter at the time?

19 A Yes, sir.

20 Q Where was Mr. Lucy sitting?

21 A On the other side of the counter sitting on a
22 stool.

23 Q He was approximately 10 feet away?

24 A Yes, sir, fully that.

25 Q And this remark that you say was made to you

Mrs. Zehmer - Direct

39.

1 "it is just a joke" was made in an undertone?

2 Q Yes.

3 Q So Mr. Lucy would not hear it?

4 A Yes, sir.

5 Q And Mr. Lucy did not hear it?

6 A I don't think he did.

7 Q In other words, the secret intention of Mr. Zehmer
8 was not communicated to Mr. Lucy at that time, that is the
9 intention not to sell, was it?

10 A Ask me that question again.

11 Q I said, any intention that Mr. Zehmer might have
12 had not to sell the property, and which he communicated to
13 you in an undertone, was not heard by Mr. Lucy?

14 A It wasn't intended to be.

15 Q What say?

16 A It wasn't intended to be.

17 Q You read what you signed, of course, did you?

18 A Yes.

19 Q When you read "we hereby agree to sell to W. O.
20 Lucy", what did you interpret that to mean, that particular
21 phrase?

22 A Well, I thought that that was a cash sale that
23 night.

24 Q The language in there, "The Ferguson Farm", what
25 did you intend that to mean?

1 MR. WHITE: Do you mind showing the
2 memorandum to the witness?

3 NOTE: At this point the memorandum in
4 question is shown to the witness.

5 MR. WHITE: Is ~~tht~~ the original paper?

6 MR. HARRISON: As far as I know, yes.

7 (Referring to the paper the witness is now
8 examining)

9 Q What did the three words, "The Ferguson Farm"
10 refer to?

11 A Well, the land that was in question to be sold.

12 Q That is the 471.6 acre tract of land in Darvills
13 District Mr. Zehmer bought from the Fergusons back in 1942
14 or 1943?

15 A Yes.

16 Q What did you think the memorandum meant when it
17 said, "The Ferguson Farm complete", what did that mean?

18 A Entire farm.

19 Q Did that include the equipment?

20 A There is no equipment out there.

21 Q Did that include such personal property as was
22 there?

23 A I should think so.

24 Q Wasn't there some discussion about several head
25 of cattle there?

1 A No, not several. It was two.

2 Q Was any discussion about the number of cattle?

3 A Mr. Lucy said, "You have any cattle out there?"

4 He said, "I have two calves, I think, two cows and two
5 calves." He said, "Would you include those?" He said,

6 "Oh, yes, I would include those."

7 Q And how about the tobaccosticks?

8 A I didn't hear that. I didn't hear that, I did
9 hear about the calves.

10 Q You did hear Mr. Zehmer say, "Oh, yes, I would
11 include that"?

12 A Yes, he said you can have those.

13 Q What else did the word, "complete", include other
14 than the land and buildings thereon?

15 A I know of nothing else except the cows.

16 Q There was no farming equipment on the property
17 at the time?

18 A Not that I know of.

19 Q The property consisted of farm and buildings
20 thereon? And two head of cattle?

21 A That is right.

22 Q Approximately two head of cattle?

23 A That is right.

24 Q Which you heard in the discussion of these two
25 men in the conference that they had?

Mrs. Zehmer - Direct

42.

1 A Yes, sir.

2 Q You spoke of \$50,000.00 being cash that night.
3 You of course knew that Mr. Lucy did not have \$50,000.00
4 cash in his pocket, very few people carry that amount of
5 money around?

6 A Well, he said he could pay for it cash that night.

7 Q If you all expected him to pay for it that night,
8 Mrs. Zehmer, why did you add, "title satisfactory to buyer."
9 What did that mean? What was said about the status of the
10 title, and whether there were any liens on it, and if the
11 title was good?

12 A Well, I -- (pause) I just told you what I heard,
13 that is all I heard, about the cows.

14 Q Do you recall anything being said about his having
15 title examined that night?

16 A No, I didn't.

17 Q But you are a very intelligent woman, I know
18 personally, and you also know when a transaction this large
19 takes place involving real estate it is usual and customary
20 for the person to have the title examined?

21 A That is right.

22 Q When you wrote that part of it, read that part of
23 it, I mean, before you signed your name, didn't you
24 understand that if the title were good Mr. Lucy would agree
25 to pay \$50,000.00, but if the title were bad that he would

1 have the right to reject the farm? Wasn't that your
2 understanding?

3 A I didn't hear anything about the title.

4 Q I mean, your understanding?

5 A Yes, according to my understanding.

6 Q That was your understanding at the time you signed
7 your name?

8 A Yes.

9 Q If a flaw developed in the title that Mr. Lucy could
10 reject it, isn't that true?

11 A Well, that is true.

12 Q And if the title were good he would have to take it,
13 isn't that true?

14 A Yes.

15 Q And then with that understanding Mr. Zehmer signed
16 his name to it, and you signed your name to it, is that right?

17 A Yes.

18 Q Is this wholly in the handwriting of Mr. Zehmer,
19 this memorandum of agreement?

20 A It looks like it, yes.

21 Q Will you please examine it closely and state if
22 there is any doubt or reservation in your mind as to the
23 genuineness of that agreement?

24 A This has been kept unusually good, it seems to me
25 (looking at paper writing later marked and filed as Exhibit 1).

Mrs. Zehmer - Direct

44.

1 The piece of paper looks like it is very fresh.

2 Q Is ^{it} the agreement that was signed by you and
3 Mr. Zehmer?

4 A That is my handwriting.

5 Q Is it also in Mr. Zehmer's handwriting?

6 A Well, he was drinking so I wouldn't never recognize
7 that as being his handwriting that night. It doesn't look
8 very much like it.

9 Q But, Mrs. Zehmer, this is the agreement that he
10 wrote out himself and had you sign, is it not?

11 A (Pause) Yes.

12 Q Then it is the agreement that was written on the
13 back of one of your charge or credit slips, whatever you
14 call them, is that true?

15 A Well, he wrote the agreement on the back of the
16 slip.

17 Q And this was written on December 20?

18 A On Saturday night, yes.

19 Q 1952?

20 A That is right.

21 MR. HARRISON: We at this time ask this be
22 introduced in evidence marked as Exhibit 1.

23 NOTE: This paper writing, in size being
24 three by four and one-half inches, seemingly a
25 guest check slip, on the stationery of Ye Old

Mrs. Zehmer - Direct

45.

1 Virginnie Restaurant, Garage-Service Station,
2 25 miles south of Petersburg, McKenney, Virginia,
3 bearing on the reverse side, the white side the
4 following in pen and ink: "We hereby agree to sell
5 to W. O. Lucy the Ferguson Farm complete for
6 \$50,000.00. Title satisfactory to buyer. A. H.
7 Zehmer. I da P. Zehmer," is now marked and
8 filed as Exhibit 1.

9 Q During the time that this conference was had
10 between your husband and Mr. Lucy, was the restaurant being
11 operated and sales being made?

12 A No indeed. The only person that came in was
13 Paul, the McClelland man. He came in for a hamburger or
14 something, he was late that night, but he generally ate
15 when he finished.

16 Q Was anybody else present?

17 A No, no one else was there except Mrs. Chappel,
18 the waitress. Also Mr. Zehmer and Mr. Lucy and I.

19 Q Do you recall that on the following day you and
20 Mr. Zehmer, Mr. Lucy and his wife and a great number of
21 people in the county attended a house opening or house
22 warming or party or some kind of gathering given by
23 Mr. Batte who just moved into a new home?

24 A Yes, sir.

25 Q That is Mr. J. P. Batte, Clerk of the Court?

1 A No.

2 Q That is Mr. J. P. Batte, brother of the Clerk
3 of the Court, is that right?

4 A Yes.

5 Q Did you attend this house warming?

6 A I did.

7 Q Was Mr. Lucy there?

8 A Yes.

9 Q Do you recall whether you made any remarks at
10 that time to Mr. Lucy or in his presence regarding the
11 sale of the Ferguson Farm which had occurred the prior
12 night?

13 A Yes, I do.

14 Q What statement did you make, if any?

15 A There were several standing talking about the
16 transaction the night before, and I passed by, was walking
17 around three or four parties there on the grounds, and I
18 passed at the time that \$50,000.00 was mentioned. I stepped
19 up and I said, "Well, with the high-price whiskey you were
20 drinking last night you should have paid more. That was
21 cheap."

22 Q So your comment was that Mr. Lucy had really
23 gotten a bargain at \$50,000.00?

24 A They are the words that I said, and I walked
25 away, and I don't know what took place after that.

1 Q So by the following day it was fairly well known
2 in the McKenney neighborhood that the sale had occurred?

3 A Well, news travels fast. I don't know about that,
4 we are out of the corporate limits, and I don't have too
5 much contact with McKenney people.

6 Q In a small town news does travel fast?

7 A That is right.

8 Q And it was the subject of some considerable
9 conversation at that particular party?

10 A Well, no one said very much to me about it.

11 Q But you did hear the remarks about the sale?

12 A Not too much.

13 Q But you heard something about it?

14 A I believe (pause) someone asked me if we had sold
15 the Ferguson Place at the Post Office, and I said, No.

16 Q Was that at the party?

17 A No.

18 Q That was not at the party?

19 A No.

20 Q But I am talking about at the party.

21 A Oh, no, no one mentioned it to me at the party.

22 Q But it was at the party that you made the remark?

23 A Yes, there were several people standing there
24 together, several men.

25 Q And they were the men that were talking about the

1 sale?

2 A Yes, and ^{as}/I passed by I heard the \$50,000.00
3 mentioned.

4 Q You heard \$50,000.00 mentioned?

5 A Yes, heard \$50,000.00 being used, and I said
6 would -- I said with the high-price of liquor that you
7 people were drinking last night it should have been more,
8 it was too cheap.

9 Q It was too cheap?

10 A Yes, sir.

11 Q That was definitely said at the party?

12 A Yes.

13 Q Later on you made the statement to somebody you
14 all had not made the sale?

15 A Yes, sir.

16 Q That was several days after?

17 A Yes, sir.

18 Q Day or week or ten days, two weeks?

19 A I have no idea. It was at least a week if not
20 more.

21 Q At least a week later?

22 A Yes, sir.

23 Q When you said the sale had not been made?

24 A Yes, sir.
25

1 CROSS EXAMINATION

2 BY MR. WHITE:

3 Q I think the story is a little unfinished. How
4 long did you and Mr. Zehmer discuss signing this particular
5 piece of paper (Exhibit 1) when he brought it over to your
6 side of the room and asked you to sign it? Do you think
7 you talked as much as two or three minutes?

8 A We didn't talk at all, he just said, "Put your
9 name on this." I said, "No indeed." And he leaned down
10 and said, "It is just a joke, it is all right." I signed
11 it, he was drinking. He laid this piece of paper, or the
12 piece of paper that he signed, right here, Mr. Lucy said
13 let me see it. With that he took the piece of paper,
14 folded it, put it in his wallet. He said, "Zehmer, let
15 me give you \$5.00." He said, "No, this is liquor talking."
16 He says, "I don't want to sell the farm, I have told you
17 that I want my son to have it." He said, "This is all a joke."

18 With that Mr. Lucy said, "Zehmer", and he raised
19 his voice, he said, "Zehmer, you have sold your farm." He
20 said it at least twice, and then wheeled around on this
21 seat and started to the door, and you could tell definitely
22 that he was drinking. He paused at the door and he said,
23 "I will bring you \$50,000.00 tomorrow." Then he said, "No,
24 tomorrow is Sunday, I will bring it to you Monday."

25 Then he closed the door and said, rather I said,

1 "I would hate to be on the road tonight and meet that man
2 driving, you should have taken him home." He said, "Well,
3 I am just about as bad off as he is." Evidently Zehmer had
4 had something to drink before he came over there. That is
5 what happened.

6 Q What happened to the five dollars?

7 A It wasn't taken by Mr. Zehmer, I know that.
8 Mr. Lucy had it in his hand, said let me give you five dollars,
9 and he said, "No, I am not taking it."

10 Q Mrs. Zehmer, coming back to this: Mr. Harrison
11 asked you what you understood at the time that you signed
12 this paper. Did you and Mr. Zehmer discuss any of these
13 matters as to what "title satisfactory to buyer" meant?

14 A No, sir, not one thing.

15 Q At the time did you think anything about it at
16 all?

17 A Oh, no, because he told me, he said it is just a
18 joke. He said it was all right, it is just a joke. I read
19 it over, signed it as quickly as that (indicating by snapping
20 fingers).

21 Q So your answer to Mr. Harrison's questions as to
22 what you understood by these various expressions on this
23 piece of paper are what you understand now, not what you
24 were thinking about at the time, is that right?

25 A Oh, no.

1 Q In other words, you didn't think anything --

2 A Nothing whatsoever, after he told me it was a joke.

3 Q When you signed this did you intend to make any
4 contract with Mr. Lucy to sell that farm?

5 A None whatsoever. That is not a contract, that is
6 a piece of paper.

7 Q The next day at Mr. Batte's party you were asked
8 about a certain remark you made. Did you make that remark
9 to Mr. Lucy himself?

10 A I said it just as I walked up and said what I
11 said, whoever might have heard it.

12 Q Was that the only mention at that party that was
13 made of this transaction at all?

14 A That was the only one.

15 Q When you were being examined by counsel for the
16 complainant there the word "sale" was used as to whether you
17 intended a sale.

18 I now ask you at this time when you were discussing
19 this matter with Mr. Lucy, or with your husband, have you
20 ever made any statement that you had sold the farm to
21 Mr. Lucy?

22 A None whatsoever.

23 Q Did Mr. Lucy ever ask you anything about purchasing
24 this farm?

25 A Never.

1 Q Did he ever address any remarks to you with
2 respect to purchasing the farm?

3 A No, sir.

4 Q While they were there did you see Mr. Lucy take
5 a drink?

6 A Yes.

7 Q Did you see Mr. Zehmer take a drink?

8 A Yes.

9 Q Have you any idea how many they took while they
10 were there?

11 A No.

12 Q You stated I believe they were there about an
13 hour?

14 A Yes, fully that.

15 Q Would you please state as nearly as you can the
16 condition in which Mr. Lucy and Mr. Zehmer were at the time
17 that this transaction came up, this paper was written?

18 A Well, I can see from that handwriting that he
19 was pretty intoxicated.

20 Q You mean Mr. Zehmer?

21 A Mr. Zehmer. It doesn't look much like his
22 handwriting.

23 Q What about Mr. Lucy's condition?

24 A Mr. Lucy was drinking quite a lot, as I just told
25 you, when he left. From the condition that he was in I

Mrs. Zehmer - Cross

53.

1 suggested to Mr. Zehmer if he didn't think he should drive
2 him home.

3 Q Were you in the room with Mr. Zehmer and Mr. Lucy
4 the entire time Mr. Lucy was there that night?

5 A Yes, sir, I was.

6 Q You said you stayed there about an hour?

7 A Fully that.

8 Q You stated I believe that they were laughing and
9 talking and drinking?

10 A Yes, very loud.

11 Q How much of the time was spent, if you recall,
12 in discussing any details with respect to the sale of the
13 farm?

14 A Well, they argued pro and con for right good
15 while.

16 Q What was the argument mostly about?

17 A About Lucy not having the cash.

18 Q The argument was mostly about the fact that
19 Mr. Lucy didn't have \$50,000.00?

20 A That is correct.

21 Q I believe you stated that Mr. Zehmer was talking
22 and told Mr. Lucy that he could form a syndicate and probably
23 raise \$50,000.00?

24 A Yes, sir.

25 Q But that he didn't have it?

1 A But "you don't have it tonight".

2 Q That was really the center of the laughing and
3 talking that was discussed?

4 A Yes, that is all that was discussed.

5 Q When Mr. Zehmer refused to take the five dollars,
6 what was Mr. Lucy's attitude? What did he do? When Mr.
7 Zehmer said that he wouldn't take the ^{five} dollars, what did Mr.
8 Lucy do?

9 A I don't remember that he said anything. He held on
10 to it, Mr. Zehmer didn't touch the bill. Mr. Lucy took the
11 five dollars out of his wallet and he says, "Zehmer, here
12 take this five dollars." He said, "No, I am taking your
13 money, because this is liquor talking, and you know I have
14 told you before --" -- it seems Mr. Lucy had tried to buy
15 the farm before, and he said, "You know I have told you that
16 I wanted it for my son, and I am not selling it. This is just
17 a joke."

18 Q What was Mr. Lucy's attitude at that time, what
19 did he do after Mr. Zehmer said that?

20 A That is when he raised his voice and he said,
21 "Zehmer, you have sold your farm," twice at least. Then got
22 off the stool, walked to the front door, started out and
23 just as I told you, he said that he would bring the money
24 to him tomorrow, and he said no tomorrow was Sunday, so he
25 would bring it to him Monday. That is all there was to it.

1 Q Did Mr. Zehmer ever say after he refused the
2 five dollars, did he ever tell Mr. Lucy that he would sell
3 him the farm?

4 A No, sir.

5
6 REDIRECT EXAMINATION

7 BY MR. HARRISON:

8 Q If I understand correctly, most of the conference
9 was around the ability of Mr. Lucy to raise \$50,000.00?

10 A That is correct.

11 Q And not so much as to whether Mr. Zehmer was going
12 to sell, or whether Mr. Lucy was going to buy, but whether
13 or not Mr. Lucy could raise the money to pay for it, is that
14 correct?

15 A That is correct.

16 Q Do you recall that when Mr. Lucy offered Mr. Zehmer
17 the five dollars that Mr. Zehmer replied that it wasn't
18 necessary to pay him any five dollars, his word was just as
19 good as his bond?

20 A Oh, no, definitely.

21 Q Didn't he say "You have the agreement"?

22 A No, indeed.

23 Q That wasn't said?

24 A No, indeed.

25 Q But you do recall you suggested to your husband,

1 Mr. Zehmer, that he drive Mr. Lucy home?

2 A Yes.

3 Q You thought Mr. Lucy had been drinking too much
4 to drive?

5 A I did.

6 Q So you suggested that Mr. A. H. Zehmer, your husband,
7 take him and drive him home?

8 A Yes, sir.

9 Q So at that time you didn't consider that your
10 husband had been drinking to the extent that he couldn't
11 drive a car with perfect safety to himself and others on
12 the highway?

13 A He had evidently had something I didn't know
14 anything about. Zehmer can drink a lot of liquor and people
15 can't tell it.

16 Q But at that time you thought it was perfectly safe
17 for your husband to be out on the highway driving an
18 automobile and taking Mr. Lucy home, isn't that true?

19 A I suggested that, yes. I thought so.

20 Q Knowing you as I do and knowing your family, you
21 wouldn't have suggested that your husband take an automobile
22 out on the highway if you thought that by doing that he would
23 endanger either his own life or anybody else's?

24 A That is right.

25 Q So you thought your husband at that time was in

1 full possession of his faculties and able to drive a car,
2 look after Mr. Lucy and take him home, because you thought
3 Mr. Lucy had been drinking too much?

4 A Well, I didn't think Mr. Zehmer had had as much.

5
6 RE-CROSS EXAMINATION

7 BY MR. WHITE:

8 Q But Mr. Zehmer thought so?

9 A Yes, he evidently did.

10 Q What did he say?

11 A He said, "I don't think I can take him home, I am
12 about as tight as he is."

13
14 And further this deponent saith not.

15 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.
16
17
18
19
20
21
22
23
24
25

1
2
3 A. H. ZEHMER, called as an adverse witness
4 by Mr. Harrison, first being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HARRISON:

7 Q Mr. Zehmer, please state your name, age, occupation
8 and residence?

9 A Adrian Hardy Zehmer, I am 61 years of age,
10 operate a tourist court at McKenney, Virginia.

11 Q You are one of the defendants in this action
12 brought by W. O. and J. C. Lucy?

13 A Yes, sir.

14 Q How long have you owned the Ferguson Farm?

15 A I really don't know. I will have to go and look
16 at the deed to tell you.

17 Q Has it been longer than ten years?

18 A I would think so, but I wouldn't say definitely.
19 Time passes so fast I just don't remember about that.

20 Q From whom did you buy it?

21 A I think it was from Mr. Ferguson, Dr. Ferguson,
22 I believe it was, up in Lunenburg or Mecklenburg County.
23 I haven't looked at the deed in years, ten years, I don't
24 think.

25 Q How many acres are in the tract of land?

1 A I believe it is 471 or 72 and a fraction. I
2 couldn't even swear to that, because I don't remember
3 exactly.

4 Q How far is the Ferguson Farm from McKenney?

5 A About six and a half or seven miles.

6 Q How do you go to it?

7 A Take 40 out of McKenney, go right through it.

8 Q Route 40 goes right through the farm?

9 A Yes, sir.

10 Q How much did you pay for the property at the time
11 you purchased it?

12 A I don't remember.

13 Q You don't know what you paid for it?

14 A Yes, I know, I didn't know that I would have to
15 come in here to this hearing and --

16 MR. WHITE: I object to the question on the
17 ground that it is irrelevant.

18 MR. HARRISON: We are entitled to have it in
19 the record. If it is immaterial the Court will
20 strike it out.

21 MR. WHITE: In the absence of proof of when
22 he bought it, you expect to prove that, I assume?

23 MR. HARRISON: Yes, sir.

24 Q You may answer the question.

25 A I gave \$11,000.00 for it, I am sure, what year I

Mr. Zehmer - Direct

60.

1 just don't remember.

2 Q You know what the assessed value of the property is?

3 A No, sir, I would have to look at the tax receipts
4 to tell you that.

5 Q Do you know what your annual taxes are?

6 A I would have to go and get the tax receipts. I
7 don't have them with me.

8 Q Had Mr. Lucy ever made you an offer to purchase
9 this Ferguson Farm prior to December 20, 1952?

10 A Yes. He had mentioned it to me a good many times.

11 Q How many times had he offered to buy the place?
12 How much did he offer to pay you for it?

13 A Never made me an offer. I always gave him a reply
14 that I wasn't interested in selling. I told him I was saving
15 it for my boy, was giving it to him to raise cattle on when
16 he got through school. I promised my boy a good many years
17 ago that I would give it to him for a wedding present the
18 day he got married, if he wanted to farm and raise cattle.

19 Q But Mr. Lucy had manifested an interest in
20 buying this property from you on several prior occasions?

21 A I have had 25 or more or less offers to buy it,
22 and I wanted to get a price on it at one time, never made
23 any of them a price. I told them that I would give them
24 all the identical same answer, that I wasn't interested in
25 selling it.

Mr. Zehmer - Direct

61.

1 Q I am asking you specifically about Mr. Lucy.
2 Had he offered any amount of money for it before, had he
3 ever evidenced any interest in buying the property from
4 you before December 20, 1952?

5 A I thought I answered that question sometime ago,
6 and I said yes. I thought I did.

7 Q How many times?

8 A Several times. My answer to him was and always
9 has been that I wasn't interested in selling it.

10 Q He never made you the offer and --

11 A He never made me an offer, one time he did make
12 me, I might say an offer. He offered me, asked me one time
13 would I swap the Ferguson Farm for his home place where he
14 now lives, and I gave him the same reply as I gave him
15 every other time, that no I didn't want to trade, I didn't
16 want to sell.

17 Q I ask you did he on December 20, 1952, offer you
18 \$50,000.00 for the Ferguson Farm?

19 A Well, it is kind of a story behind all that. I
20 want to relate that before I answer that question. On the
21 night of December 20, I was working over there at the garage
22 and service station located about 200 feet approximately
23 from this restaurant, where all of this conversation took
24 place.

25 It was a little late closing up that night, on

Mr. Zehmer - Direct

62.

1 account of the fact that Mr. McClelland, who has already
2 testified here, was working for me at the time, he had a
3 garage job there that took him beyond the usual closing time
4 which was six o'clock.

5 We had to stay over there, I would say, a couple
6 of hours, toward eight o'clock or a little after before he
7 got through.

8 This was just, you know, Saturday night before
9 Christmas and it looked like to me everybody and his brother
10 came by there to have a drink. I am one of these kind of
11 fellows who can't refuse them. I also had a pint of my
12 own there, and I took a good many drinks off and on during the
13 afternoon, waiting for the man to close up, took some more,
14 and Paul, the mechanic, Mr. McClelland, when he got through,
15 he and another man or two, I have forgotten exactly who it
16 was, were there, and we took, we all took a couple of drinks
17 apiece again before we shut the garage up.

18 Which was around a little after eight o'clock, or
19 maybe 8:30, I would say, something like that, maybe quarter
20 to nine.

21 Well, I go around, as is my usual habit, and cut
22 the lights out around on the cabins, on the cabin grounds,
23 lights on the service station were already out, and lights
24 in front of the restaurant were already out, my wife was
25 over there waiting for me to come over, we were going to

Mr. Zehmer - Direct

63.

1 walk down through the woods and go home.

2 And I walked in the door there, there was
3 Mr. Lucy. Didn't know he was in there. He was carrying on
4 a very animated conversation there, and his face was flushed,
5 and I could tell the man had had something to drink. I know
6 the sensation, I know the signs all too well myself.

7 So we spoke, as we always do, we have always been
8 pretty friendly. I called him W. O., he calls he Hardy.
9 I walked around behind the counter there and talked a little
10 while, I could see that he was pretty high, and I said,
11 "Boy, you got some good liquor, drinking, ain't you?"
12 He said, "Yes." Reached in his pocket and pulled out this
13 pint bottle, said have a drink."

14 I was already high as a Georgia pine, and didn't
15 have any more better sense than to pour another great big
16 slug out and gulp it down, and he took one too.

17 Well, talked along, and he brought the conversation
18 out, said, "Have you still got the Ferguson Farm, yet, is
19 it sold?" I said, "No, I haven't sold it."

20 That is what the conversation started about. He
21 said something about I bet you wouldn't take \$50,000.00 for
22 it. I know I asked him, I said, "Give me \$50,000.00 for it."
23 He said, "Yes." My reply to that was, I said, "You haven't
24 got \$50,000.00 in cash." He said, "I have got it." I said,
25 "I don't believe it."

Mr. Zehmer - Direct.

64.

1 Of course we argued that there pro and con for a
2 long time on whether he had \$50,000.00 or not, you know
3 how two drunks will do. We never discussed the meets and
4 bounds, the boundaries or whatnot, what I had on it or
5 anything else. The main argument was, the gist of the whole
6 thing was whether he had \$50,000.00 in cash that he could
7 put up right then and buy that farm. That was the main talk.

8 We talked about that thing a long time, the longest
9 kind of time. Finally he said, "If you don't believe I have
10 got \$50,000.00 you sign that piece of paper here and say you
11 will take \$50,000.00 for the farm."

12 So I reached over there and just grabbed the back
13 off of a guest check there and I wrote on the back of it,
14 I think you have got it there somewhere now, that I would
15 like to see it if you have got it, see if I recognize my
16 own handwriting.

17 NOTE: At this point the witness is handed
18 the paper writing formerly put in evidence as
19 Exhibit 1.

20 Great balls of fire (talking to himself) I got
21 "Firgerson" for Ferguson. I have got satisfactory spelled
22 wrong. I don't recognize that writing if I would see it,
23 wouldn't know it was mine.

24 So he said you get a piece of paper and sign it,
25 and I will prove it to you, or something, words to that effect,

Mr. Zehmer - Direct

65.

1 he said I will prove it to you that I have got \$50,000.00.

2 I reached in and scribbled this thing off. He
3 said get your wife to sign it. I walked over there where
4 she was, and just like she said I did, just like we were
5 talking, and I told her I was just needling him, and didn't
6 mean a thing in the world, that I was not selling the farm.
7 First she refused to sign it, then she signed it.

8 So I took it back over there and I was standing
9 behind the counter leaning over with my elbows like this
10 (indicating on counsel table), as well as I can remember,
11 the palms of my hand laying there just like this, and I
12 was still looking at the dern thing. I had the drink right
13 there by my hand, and I reached over to get a drink, and he
14 said, "Let me see it." He reached and picked it up, and when
15 I looked back again he had it in his pocket and he dropped
16 a five dollar bill over there, and he said, "Here is five
17 dollars payment on it."

18 I used the word hell, if you will excuse the
19 expression, I said, "Hell no, that is beer and liquor talking.
20 I am not going to sell you the farm. I have told you that
21 too many times before."

22 He said, "I have got your and your wife's names
23 on this piece of paper. You have sold it."

24 That is as near as I can recall it.

25 I told him no, no it wasn't a sale, just liquor

Mr. Zehmer - Direct

66.

1 doing the talking, just a bluff, we were just needling each
2 other.

3 He got pretty huffy along about then, I could see
4 he was getting mad about the whole thing. He didn't stay over
5 but a few minutes longer, and he got off the stool, my wife
6 already testified that he was pretty tight, staggered from
7 there to the door. When he got to the door he said, "I will
8 be up here tomorrow with that \$50,000.00." Then he thought
9 again, and he said, "Tomorrow is Sunday, I can't bring it to
10 you tomorrow, but I will bring it to you by 11 o'clock Monday
11 morning."

12 He slammed the door and walked out.

13 I didn't consider it was any sale. I wasn't a bit
14 concerned about the whole thing. The next afternoon when we
15 were at a party at Mr. Batte's he was there, there was a big
16 crowd there, and as soon as I got around the crowd to him
17 I walked up to him and I said, "W. O., that was pretty high
18 price potent liquor we were drinking last night, talking big
19 money." He said, "Yes, I was as drunk as hell. Why didn't
20 you take me home?" I wasn't fit to drive a car, so I said,
21 "I was just as bad off as you were."

22 And I said, "I want to tell you again, as I told
23 you last night, that was alcohol, liquor, talking last night,
24 that thing you got, that piece of paper that you got in your
25 pocket don't mean a thing."

Mr. Zehmer - Direct

67.

1 I said, "I didn't take the money, don't consider
2 it a deal."

3 I further said, "I am not trying to say this
4 because I think the price is too cheap, if I wanted to sell,
5 I think \$50,00000 would be a good price, and I think you
6 would get stuck."

7 That is about the time my wife walked up. She
8 made the remark, as she told you, she said, "Yes, the liquor
9 you folks were drinking last night you would have given a
10 hundred thousand dollars", something like that. He said,
11 "It isn't the first time I've been stuck,^{if}/I am stuck."
12 And in the meantime a lot of folks came in, and that is all
13 the conversation we had.

14 He came by there again following Tuesday night,
15 I believe it was, in the presence of Judge Barrow, and I
16 still wasn't concerned about the thing. I thought he was
17 just needling me. I didn't think then he considered it a
18 deal. He came by the following Tuesday night, I believe it
19 was, with Judge Barrow, and in a laughing kind of way he
20 said, "Hardy, when are you going to give me that deed?"

21 I thought then he was just sill trying to needle
22 me a little bit, so I gave him the same reply. I said,
23 "Boy, you know what I told you, it was just liquor talking.
24 There won't no deal, we were just kidding each other."

25 So I still wasn't concerned about the thing. Two

Mr. Zehmer - Direct

68.

1 or three weeks after that I got a letter from him saying
2 that he was ready for the deed, had his cash and he was
3 ready for the deal. Then I found out he really was in
4 earnest.

5 Q Is that all?

6 A That is all that I think of right now.

7 Q You remember what you have stated, and you are
8 positive that it is exactly what occurred?

9 A No, sir, no, sir. Big talk, lot of things were
10 said, and I don't remember, I don't believe any human
11 living could possibly remember everything that was said.
12 We talked for half an hour or maybe three-quarters of an
13 hour. The gist of the whole thing was about the \$50,000.00,
14 he tried to prove to me, we were arguing back and forth
15 about the cash, arguing about the cash in hand, and I
16 tried to prove and argue that he didn't have it.

17 Q But you do remember accurately and in great detail
18 that about which you have just related and testified?

19 A I remember we argued about the \$50,000.00 a long
20 time. I don't remember all the words that were said,
21 I don't know.

22 Q I am asking you, Mr. Zehmer: What you have said
23 and related here in your testimony is true and accurate?

24 A The gist of it, the main outline. I went over
25 the facts, I didn't give them all on that piece of paper.

Mr. Zehmer - Direct

69.

1 I know I didn't give him that piece of paper, as I told you
2 before, it was lying between my elbows. I was resting like
3 this (indicating) and I reached over and got the drink that
4 I had already poured out and was drinking that, and as I did
5 that he said, "Let me see it." And he picked it up, he did,
6 and by the time I finished the drink he had the thing in his
7 pocket, and had five dollar bill laying there on the table,
8 and said, "Hardy, here is five dollar payment on it." That
9 is when I said, "Boy, this is just a bluff, liquor is doing
10 the talking."

11 Q You do remember all these things about which you
12 have testified?

13 A I remember the fact that we talked a long time
14 about the \$50,000.00. He talked about whether he had it or
15 whether he didn't have it. That was the main talk that we
16 had, the main topic of the conversation.

17 Q But the statements that you attribute to Mr. Lucy
18 and the statements that you have attributed here that you
19 made, are accurate statements and you remember them, is that
20 true?

21 A What particular statement do you mean?

22 Q What you have testified here today.

23 A Mention one of them.

24 Q All of them. Everything you have said here is
25 the truth?

Mr. Zehmer - Direct

70.

1 A Yes, sir.

2 Q Then you do remember it?

3 A I remember what I have said, yes.

4 Q So you were not too intoxicated and had not been
5 drinking so much that you do not have a very vivid recollec-
6 tion of the conversation and the conference that you had
7 with Mr. Lucyon the night of December 20?

8 A I remember having it, sir, but all of the
9 conversation we had, sir, I don't recall it. I remember the
10 fact he brought up the subject that ^{had} I sold the Ferguson Farm.
11 I remember he said he would give me \$50,000.00 cash. I
12 know a lot of argument started after that, and we took off
13 from there. I said that he didn't have it, he said that he
14 did.

15 Q So most of the conversation was about whether he
16 could pay for the farm or not?

17 A There was a conversation whether he had \$50,000.00
18 cash, \$50,000.00 cash he could deliver right then for the
19 farm.

20 Q You understood of course he was not going to pay
21 you \$50,000.00 cash that night?

22 A No, sir. It was a cash deal right there. He said
23 he had it right then and there, in hand. That is what the
24 argument started about. That was the gist of the whole
25 conversation, right there.

Mr. Zehmer - Direct

71.

1 Q Then if he was supposed to pay cash for it that
2 night, Mr. Zehmer, why did you insert in your memorandum
3 of sale "title satisfactory to buyer"?

4 A I don't say he was going to pay cash for it that
5 night. He said he had cash in bank right then to pay it.
6 That is the gist of it.

7 Q You as a business man knew that the transaction
8 would not be completed on a Saturday night, December 20,
9 did you not?

10 A Wasn't any transaction, I didn't consider it so.

11 Q You knew he wouldn't pay you in cash money that
12 night?

13 A He reached over the table and picked up the paper.
14 I hadn't handed it to him.

15 Q Who wrote this agreement?

16 A I did.

17 Q Whose handwriting and whose language is it?

18 A Mine.

19 Q Did Mr. Lucy dictate it?

20 A No, sir.

21 Q What did you mean when you wrote "we hereby agree
22 to sell to W. O. Lucy the Ferguson Farm", what is the meaning
23 of that?

24 A The whole thing was just as I told you before,
25 needling him, bluffing, just a bluffing game both of us were

1 pulling off, is the way I considered it, and I still do.

2 Q Mr. Lucy had offered you \$50,000.00 cash for the
3 farm, that is true?

4 A He said that he would give me \$50,000.00 cash for
5 the farm. That is what the argument started about.

6 Q He made you an offer of \$50,000.00 cash for the
7 farm complete, is that right?

8 A I have already said that.

9 Q Then it is true?

10 A It is true, yes, he did it that night.

11 Q Mrs. Zehmer has testified that the word "complete"
12 included a couple of heifers or cows that were on the property.
13 Is that true?

14 A It may have been, I don't know. As I said before,
15 I don't remember everything that took place that night.

16 Q What did you mean by the words "Ferguson Farm
17 complete" when you in your own handwriting wrote that?

18 A I couldn't have told you like today to save my life
19 what I had in mind, I mean what I had in the note. I don't
20 know exactly what I had in it.

21 Q What is your interpretation of the word "complete"?

22 A It means everything on it.

23 Q What was on it at that time, December 20, 1952?

24 A I think it was a couple of cows on it.

25 Q Was there anything else there except a couple of

Mr. Zehmer - Direct

73.

1 cows?

2 A No, sir.

3 Q What say?

4 A No, sir.

5 Q Any tobacco sticks there?

6 A I think it was some tobacco sticks probably down
7 there on the other man's farm, he has at his house.

8 Q The words "\$50,000.00" inserted in the memorandum
9 by you, that is the sum that he offered you for the property?

10 A That is what started the whole concern, that is
11 what started the argument, he said he had \$50,000.00 cash
12 in hand.

13 Q You interpret that to mean \$50,000.00 in bank,
14 or \$50,000.00 that he had in his pocket or that he could
15 raise?

16 A That is right.

17 Q What did you put in there "title satisfactory to
18 buyer", why was that phrase inserted in the memorandum of
19 sale?

20 A I think that was his suggestion, to put that in
21 there, I think it was. I don't remember.

22 Q As a businessman you contemplated that he would
23 of course have the title examined?

24 A Well, in an ordinary deal when you have time to sit
25 down and think about a deal you consider all those things,

Mr. Zehmer - Direct

74.

1 but that that we were doing that night, was just a bunch of
2 two doggoned drunks bluffing to see who could talk the
3 biggest and say the most. The whole thing was cockeyed.
4 The whole thing was just to drunks up there bluffing and
5 talking, that is the way it was.

6 Q But your answer is under ordinary circumstances
7 in making a deal you do consider matters such as title to
8 property, that is true, is it not?

9 A Yes, anybody who has ever done any dealing knows
10 that.

11 Q Would you have purchased a farm for \$50,000.00
12 without having title examined, Mr. Zehmer?

13 A No, sir.

14 Q Did you expect Mr. Lucy to purchase a \$50,000.00
15 farm from you without having the title examined?

16 A Had made a deal in good faith, open and above
17 board, I would have considered all of those facts, man would
18 have to have a certain length of time to investigate the
19 title, as I said, to begin with. But I didn't consider,
20 never did consider it to be any dealing. It was a whole
21 bluff and just a couple of drunks talking. That is why
22 I refused the five dollars when he handed it to me and told
23 me at the time, I told him at the time it was no deal, just
24 a bluff.

25 Q Did you tell him then that he had the agreement?

Mr. Zehmer - Direct

75.

1 Did you tell Mr. Lucy that, when you refused his five dollars,
2 you didn't need it because he had the agreement, the written
3 agreement?

4 A Didn't have to tell him, he already had it in his
5 pocket.

6 Q But did you mention that fact to him when you
7 refused the five dollars?

8 A No. As soon as he refused the five dollars, as
9 soon as I refused it he commenced to get mad and said,
10 when I told him it wasn't any deal and was just bluffing
11 and liquor talking and things like that, his manner got
12 very offensive.

13 Q How many agreements did you write, Mr. Zehmer?

14 A I don't know.

15 Q Did you write one first in which you used the
16 expression "I hereby agree to sell"?

17 A I don't remember.

18 Q You don't remember about that?

19 A No, sir.

20 Q Then if Mr. Lucy testifies that you first wrote it
21 in the singular, that is "I agree to sell" form and later
22 on at his request you changed it to "We" would that be
23 correct?

24 A No, sir. I don't think I wrote but one out
25 (again looking at Exhibit 1). I don't think I wrote but

Mr. Zehmer - Direct

76.

1 one out. Mr. Lucy never saw it until he reached over there
2 and said to let him see it. It was lying on the table just
3 like that. I was leaning over myself to see if I could get
4 heads and tails of the thing myself, and he asked me to let
5 him see it.

6 Q So that agreement was written out of the presence
7 of Mr. Lucy?

8 A Sure. He was over on one side of the counter, I
9 was over here (indicating across the table).

10 Q He did not dictate anything except to suggest that
11 part about the title being satisfactory to buyer?

12 A As near as I can recall he said put in there the
13 title to be satisfactory.

14 Q Do you recall reading the agreement to Mr. Lucy
15 after you wrote it out and signed it?

16 A No, sir, didn't read it to him. That is why he
17 wanted to see it.

18 Q Sir?

19 A I don't think he did. That is why he wanted to
20 see it, but I can't remember all those things. I told you
21 how it was, I was as high as a Georgia pine.

22 Q You did write it and sign it yourself before you
23 took^{it}/over to Mrs. Zehmer?

24 A Of course I wrote it before she signed it. Yes,
25 I think I signed it, too. I reckon I did, I don't know.

1 Q She was at a different place in the lunchroom or
2 restaurant at the time she signed it?

3 A She was about 10 or 15 feet from me, I think it
4 was. I don't know exactly, something like that.

5 Q And she has testified that you said to her in an
6 undertone or whisper that it was a joke?

7 A That is correct.

8 Q That was not in the presence of Mr. Lucy?

9 A That is right.

10 Q He did not hear that?

11 A No.

12 Q You didn't intend for him to hear that?

13 A No, I told her that because I just wanted her to
14 sign it. I knew she wouldn't sign otherwise if she thought
15 I was making a deal under the circumstances under which we
16 were making it.

17 Q After she signed it you went back to that part of
18 the restaurant where Mr. Lucy was?

19 A Across the counter from me, yes.

20 Q And sat down, and put the agreement down on the
21 counter?

22 A Yes.

23 Q Is that correct?

24 A Yes, that is correct.

25 Q The agreement then had been written by you and

1 signed by both you and Mrs. Zehmer?

2 A Yes.

3 Q And it was laid down in front of you and Mr. Lucy?

4 A He was still across from me. He was right there
5 and I was up at the counter like this (indicating), he had
6 to reach a considerable distance to get to it.

7 Q You mean --

8 A Stretch.

9 Q He was on one side of the counter and you were on
10 the other?

11 A That is right.

12 Q How wide is the counter?

13 A The counter is, I suppose -- oh, I don't know,
14 maybe two and a half or three feet wide. Of course it was
15 one of these fountains, and the counter is considerably
16 wider by reason of that. You have to reach over.

17 Q After you brought the agreement back into that
18 area of the restaurant in which you and Mr. Lucy had been
19 conferring, and laid it down on the counter, Mr. Lucy
20 picked it up, put it in his pocket and offered you five
21 dollars, is that true?

22 A That is right, as near as I can remember.

23 Q Mr. Zehmer, Mrs. Zehmer has testified she suggested
24 that you take Mr. Lucy home that night.

25 A That is correct.

Mr. Zehmer - Direct

79.

1 Q You and Mr. Lucy prior to this time, and now so
2 far as I know, are good friends and have been good friends?

3 A We have prior to this time, yes, sir.

4 Q Had you thought that Mr. Lucy had been drinking
5 so much that his driving would endanger his life or anybody
6 else's on the highway, wouldn't you have sent him home or
7 let him spend the night with you?

8 A I would have, if I had been in a normal condition
9 myself.

10 Q But you let him leave there that night?

11 A It was no one there but myself, sir. I was tight,
12 too.

13 Q On the following day at Mr. Batt's home, you do
14 recall a statement with reference to the deal that you and
15 Mr. Lucy had made the previous night?

16 A Yes, I do.

17 Q Do you recall saying to him, "Look here, Lucy,
18 I don't want to stick you with that deal. You were too
19 tight."

20 A No, sir, I made no such remark as that, I was
21 perfectly sober the next day. Hadn't had a drop.

22 Q I am talking about that night. "Look here, Lucy,"
23 and this is a statement that you made on the following day
24 at Mr. Batte's home: "Look here, Lucy, I don't want to
25 stick you with that deal. You were too tight."

Mr. Zehmer - Direct

80.

1 A I did not say that.

2 Q Exactly what were your words to him?

3 A I said, "I am not trying to claim it wasn't a deal
4 on account of the fact the price was too low," I said,
5 "If I had wanted to sell \$50,000.00 would be a good price,
6 in fact I think you would get stuck at \$50,000.00." That
7 is the time he said, "It isn't the first time I have been
8 stuck." And that ended the conversation.

9 Q So some remark was made about whether or not Lucy
10 would get stuck if he paid \$50,000.00 for the property?

11 A Certainly. I told him if I sold him for \$50,000.00,
12 if he paid \$50,000.00 I thought he would get stuck.

13 Q And Mr. Lucy's reply was --

14 A That it wasn't the first time that he had ever
15 been stuck.

16 Q Didn't he deny being tight or drunk?

17 A When?

18 Q Didn't Mr. Lucy deny that he was drunk?

19 A Did he deny it? I just told him. I told you, sir,
20 a while ago that he said, "I was too tight to drive the
21 car home, why didn't you take me home."

22 Q Didn't Mr. Lucy say, "Oh, no, I wasn't. I have
23 been stuck before, and I am going through with it."

24 A He said, what, sir?

25 Q Did he say, "I have been stuck before, and I am

1 going through with it?"

2 A His reply was, "Isn't the first time I have been
3 stuck." That was the end of the conversation. People came
4 up into there in the meantime, a bunch of people, and we
5 talked about something else.

6 Q He did say it wasn't the first time he had been
7 stuck?

8 A Yes.

9 Q Which indicated --

10 A He said it wouldn't be the first time that he had
11 been stuck.

12 Q Which indicated he still considered it a
13 transaction, didn't he?

14 A Yes.

15 Q Did you receive a letter from Mr. Lucy dated
16 January 2, 1953, advising you that he had had the title
17 examined, found it satisfactory, and was ready to complete
18 the deal?

19 A Yes, I received that.

20 Q Is this the letter that you received?

21 A Yes.

22 NOTE: This letter is now marked and filed
23 as Exhibit 2.

24 This letter is on the stationery of W. O. Lucy,
25 Dinwiddie, Virginia, dated January 2, 1953, and

1 reads as follows:

2 "Mr. and Mrs. A. H. Zehmer, McKenney, Virginia.
3 Dear Mr. and Mrs. Zehmer: I am writing this letter
4 to advise you that I am ready to pay incash the
5 purchase price for the tract of land in Dinwiddie
6 County, known as the Ferguson Farm owned by you,
7 containing 471.6 acres, more or less, in accordance
8 with the written agreement of December 20, 1952
9 to sell the property to me as the title is
10 satisfactory. Please let me know at once when
11 you will be ready to close the same. Yours very
12 truly (signed) W. O. Lucy."

13 Q You received that letter?

14 A Yes, I gave it to my attorneys.

15 Q I hand you herewith your letter to Mr. Lucy dated
16 January 10, 1953, and ask if that was written in reply to
17 Mr. Lucy's letter of the 2nd?

18 A That is correct.

19 NOTE: This letter on the stationery of
20 Ye Olde Virginnie, Restaurant-Cabins-Repair Shop,
21 McKenney, Virginia, dated January 10, 1953, reads
22 as follows:

23 "Mr. W. O. Lucy, Dinwiddie, Virginia.
24 Dear Mr. Lucy: Replying to your letter of
25 January 2, 1953.

Mr. Zehmer - Direct

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1 "As I know, and as I have repeatedly told you,
2 at the time and since, I did not intend to nor
3 agree to sell my farm. When you brought the
4 matter up at my place on Saturday night, December
5 20, we were both drinking and our discussion was
6 in that spirit. We came to no agreement about
7 anything.

8 The writing you took was written during this
9 drinking conversation, and was scribbled off
10 jokingly and mainly to see how far you would go
11 in what I took to be a bluff on your part. I
12 never intended to give it to you, and when you
13 asked to see it and put it in your pocket I
14 immediately protested and have been protesting
15 ever since. I told you then and I have told you
16 several times since that I did not intend nor
17 agree to sell at that time, and I do not wish to
18 sell now.

19 Trusting that this is clear, I am, Yours
20 very truly, (signed) A. H. Zehmer."

21 Q I hand you herewith an envelope in which you
22 mailed this letter, and ask you if that is the envelope
23 in which you sent the letter, addressed by you?

24 A Well, I don't know. It is written by a typewriter,
25 I don't know my own typing.

Mr. Zehmer - Direct

84.

1 Q Please compare the two, Mr. Zehmer, and determine
2 if that is so?

3 A I am not an authority on reading typewriting.
4 I am not much of an authority or a detective.

5 MR. WHITE: We have no objection to that.

6 NOTE: This envelope, addressed to Mr. W. O.
7 Lucy, Dinwiddie, Virginia, postmarked "McKenney,
8 Virginia, January 13, 1953, 10 A.M." is now marked
9 and filed as Exhibit 4.

10 The previous letter referred to and read into
11 the record, having been the letter enclosed in
12 this envelope was marked and filed at the time
13 of reading as Exhibit 3.

14 Q Your letter dated January 10 was in reply to
15 Mr. Lucy's letter of January 2. Did you mail this reply on
16 the 10th?

17 A I don't remember, sir.

18 Q The envelope in which it was mailed seems to be
19 postmarked January 18. Is that the date on which it was
20 mailed?

21 A I don't remember, sir.

22 Q What was the occasion for delaying nearly three
23 weeks in responding to Mr. Lucy's letter of January 2
24 advising him that he was ready to pay the purchase money?

25 A I don't know when the letter came from Mr. Lucy.

Mr. Zehmer - Direct

85.

1 I don't know when an answer was sent to him, but I know I
2 didn't wait three weeks, I know that.

3 Q Did you wait until January 18?

4 A I don't remember the date.

5 Q Or the 13th?

6 A I don't remember the date.

7 MR. BAUGH: Counsel agree that the letter is
8 postmarked the 13th instead of the 18th.

9 NOTE: Referring to the envelope, Exhibit 4.

10 Q I hand you herewith a letter addressed to you
11 under date of January 27, 1953, written by Mr. E. D. Baugh,
12 counsel for W. O. Lucy. I ask you if this letter was
13 received by you, and if so will you introduce the original
14 in evidence, if you have it?

15 NOTE: The witness is now shown this copy,
16 and the original is handed to counsel for the
17 plaintiffs, and is offered as an exhibit.

18 This letter above referred to, on the letterhead
19 of Emerson D. Baugh, Attorney at Law, Lawrenceville,
20 Virginia, dated January 27, 1953, is now marked
21 and filed as Exhibit No. 5.

22 This letter reads as follows:

23 "Mr. A. H. Zehmer, McKenney, Virginia.

24 Dear Mr. Zehmer: Please be advised that Mr. A. S.
25 Harrison, Jr., and I have been retained to

Mr. Zehmer - Direct

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1 represent. Mr. W. O. Lucy and Mr. J. C. Lucy in
2 consummating their purchase from you and
3 Mrs. Zehmer of the "Ferguson Farm complete".

4 It is noted from your letter, received by
5 Mr. W. O. Lucy of January 13th, that you consider
6 the sale as a joke. This is to advise, Mr. W. O.
7 Lucy entered into the agreement in good faith,
8 and immediately, the next day, contacted
9 Mr. J. C. Lucy and sold to him ^{one-} a/half interest
10 therein. They proceeded at once to have the
11 title examined, and prepared to pay the purchase
12 price, as you were advised by W. O. Lucy, by his
13 letter of January 2nd. It is therefore, requested
14 that you prepare and execute, good and sufficient
15 instrument conveying to W. O. and J. C. Lucy, the
16 property described in your memorandum of sale,
17 executed by you and Mrs. Zehmer on December 20,
18 1952. The purchase price will be paid by
19 certified check or cash, at your option.

20 Your acknowledgment of this letter will be
21 appreciated. We have no desire to burden you
22 with the expense of a law suit, and hope this can
23 be avoided. Yours very truly (signed) Emerson D.
24 Baugh, cc: Mr. A. S. Harrison, Jr., Attorney at
25 Law, Lawrenceville, Virginia."

Mr. Zehmer - Direct

87.

1 Q So, Mr. Zehmer, within a matter of a few days after
2 the conference of December 20 in your service station
3 Mr. Lucy had the title to the Ferguson Farm examined and
4 notified you that he was ready to pay the \$50,000.00 in
5 accordance with the written memorandum?

6 A I think his letter there is to that effect. I
7 think you have it there.

8 Q You were advised that Mr. J. C. Lucy had been
9 admitted as an interested party in this purchase, were you
10 not?

11 A I think it is in one of those letters, there is
12 information to that effect. They are all not too fresh in
13 my mind. We have the record of that somewhere.

14 Q I believe that in your statement that you
15 volunteered at the beginning of your deposition you stated
16 that two or three nights after this transaction occurred
17 Mr. W. O. Lucy came to your service station and advised you
18 that he was ready to close the transaction?

19 A No, sir, didn't advise me that.

20 Q What did he advise you?

21 A Just asked me, said, "When are you going to have
22 the deed ready for the Ferguson Farm?" Said in a joking
23 kind of way. I gave him the same kind of reply that I
24 gave him before, the other instances, it wasn't a deal,
25 I hadn't sold it.

1 Q When was that?

2 A That was on Tuesday night following Saturday of
3 this proposition, we all had this talk, when all this took
4 place.

5 Q This statement was "When will you have the deed
6 ready"?

7 A Yes, he asked me that. "When are you going to
8 have that deed ready for the Ferguson Farm?" I made the
9 same reply that I always had been making to him in regard
10 to that.

11 MR. HARRISON: That is all.

12 MR. WHITE: We reserve our cross examination
13 on this.

14 And further this deponent saith not.
15

16 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.
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1
2
3 ALBERT CARR, a witness called as a witness in
4 behalf of the complainants, first being duly sworn, testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. BAUGH:

8 Q Mr. Carr, what is your occupation?

9 A I am employed at the American Telephone and
10 Telegraph Company, sir.

11 NOTE: At this point following a short
12 discussion Mr. Harrison states as follows:

13 MR. HARRISON: We agree that any objection
14 anybody has to make can be made before the Judge
15 with the same force and effect as if made here.

16 Q Where?

17 A In the Town of McKenney.

18 Q In what capacity?

19 A As a supervisor of a repeater station.

20 Q How long have you been in McKenney?

21 A 25 years next month, August 16.

22 Q Do you know Mr. A. H. Zehmer?

23 A Yes, sir.

24 Q How long have you known him?

25 A About that long.

1 Q Do you know Mr. W. O. Lucy?

2 A I know him, sir.

3 Q How long have you known him?

4 A As much as ten or twelve years.

5 Q Did you attend a house opening party at the
6 home of Mr. Batte in McKenney on Sunday December 21, 1952?

7 A I did.

8 Q Did you see Mr. Zehmer and Mr. W. O. Lucy at that
9 party?

10 A And others.

11 Q Did you hear any conversation with reference to
12 the sale of the Ferguson Farm?

13 A I heard general comments made around that the sale
14 was made.

15 Q Did you hear any statements made by either
16 Mr. Zehmer himself or Mr. Lucy with reference to some
17 deal?

18 A I was standing in their company and Mr. Zehmer
19 was in the group, Mr. Zehmer, W. O. Lucy, and his wife was
20 off from there somewhere, and myself, and I overheard
21 Mr. Zehmer tell Lucy that he was going to let him up off
22 the deal, because he thought he was too tight, didn't know
23 what he was doing. Lucy said something to the effect that
24 "I have been stuck before, and I will go through with it."

25 I left their company then and they had further

1 conversation, they were together quite a while after that,
2 a matter of minutes, I don't know, but that is all that I
3 heard said between those two.

4 Q Did you understand from that conversation --

5 MR. GOODE: Of course we object to his
6 interpretation.

7 Q Do you recall the exact statements that were made
8 or the substance of the statements?

9 A Substance as I have stated, that he was going to
10 let him off the deal, because he thought he was too tight
11 to know what he was doing.

12 Q What deal did he have reference to?

13 A I had heard nothing mentioned of any particular
14 deal at that time between those two. I had only heard
15 part of that, that they had made a deal.

16 Q What statement if any did Mr. Lucy make?

17 A That he had been stuck before, or words to that
18 effect, and that he was going through with it. They had
19 further conversation, however, which I did not hear.

20 Q Did Lucy make any reply to the statement that he
21 was too tight?

22 A As I have already said, "I have been stuck before",
23 he didn't deny or say he was or wasn't, in my presence.

24

25

CROSS EXAMINATION

1 BY MR. GOODE:

2 Q Mr. Carr, you heard Mr. Zehmer's explanation of
3 that. Was that substantially the situation?

4 A I think Mr. Zehmer said substantially the same
5 thing I have said.

6 Q You don't claim that you heard all of the
7 conversation?

8 A I claim I did not.

9 Q And if Mr. Zehmer testified that he told Mr. Lucy
10 that he hadn't made a deal and hadn't considered it a deal,
11 you wouldn't say he didn't?

12 A I wouldn't know that at all. I didn't hear
13 anything they said about that.

14 And further this deponent saith not.
15

16 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.
17
18
19
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1
2
3 W. O. LUCY, a complainant, first being duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BAUGH:

7 Q Mr. Lucy, where do you live?

8 A Dinwiddie, Virginia.

9 Q What is your age?

10 A 43.

11 Q What is your occupation?

12 A Lumber business, some farming.

13 Q In the lumber business and farming?

14 A Yes, sir.

15 Q How long have you known Mr. A. H. Zehmer?

16 A For the last 15 years, 15 or 20 years.

17 Q Have you -- How far do you live from McKenney?

18 A Eight miles.

19 Q Are you familiar with the piece of property in
20 the Dinwiddie County Area referred to as the Ferguson Farm?

21 A Yes, sir.

22 Q How long have you been familiar with that property?

23 A For the last 10 years.

24 Q Have you ever made any effort to purchase that
25 property?

1 A Yes, sir.

2 Q Did you make such effort on the night of
3 December 20, 1952?

4 A I did.

5 Q Do you recall clearly and distinctly what occurred?

6 A Yes, sir.

7 Q Were you intoxicated that night?

8 A Not to any extent, no, sir.

9 Q Had you had a drink or two?

10 A Yes, sir.

11 Q Will you state for the record what occurred on
12 this occasion?

13 A On the night of the 20th I went into the lunchroom,
14 a little later on Mr. Zehmer, just a few minutes, Mr. Zehmer
15 came in. Started a conversation. I asked him if he had
16 sold the Ferguson place, and he said no. We talked along,
17 and presently I asked him, I said, "I bet you wouldn't take
18 \$50,000.00 for that place." He said, "Yes, I would, too."
19 He said, "You wouldn't give fifty."

20 I told him, yes that I would, you write up an
21 agreement to that effect.

22 So he proceeds to^{do}/that, he tore the pad off of one
23 of these little check books and wrote out, "I do hereby
24 agree to sell to W. O. Lucy the Ferguson Farm for \$50,000.00
25 complete." I told him, "Before you finish writing it out,"

1 I said, "You better change that thing and put "we", because
2 you will have to have Mrs. Zehmer to sign it too."

3 I said, "I have known where the wife wouldn't sign
4 the deed and had to back out on that account."

5 So Hardy said, "All right." He tore that one up
6 and wrote this one right here for he and Mrs. Zehmer to sign,
7 and he asked Mrs. Zehmer would she sign, and she said, said
8 she would for \$50,000.00, which she did. He wrote the one
9 that we have here.

10 Q Where was Mrs. Zehmer at the time this conversation
11 took place?

12 A She was over behind the counter.

13 Q How far was she from Mr. Zehmer at the time the
14 agreement was written, if you recall?

15 A She was back at the other end, I would say 10 or 12
16 feet, back at the other end of the counter.

17 Q Did Mr. Zehmer take the agreement back to her to
18 sign it?

19 A Yes, sir.

20 Q After the agreement was signed what did Mr. Zehmer
21 do with it?

22 A He brought it back and gave it to me. I offered
23 him \$5.00, he said, "You don't need to give me any money,
24 you got the agreement there signed by both of us." Those
25 were the very words that were spoken.

1 Q Did he tell you when you offered him the five dollars
2 that he was joking with you, that there was no sale?

3 A No, sir, the only words he spoke was he said,
4 "I don't need it, you have the signed agreement."

5 Q It has been testified here that the conversation
6 concerning the sale lasted probably 30 or 40 minutes. Is
7 that correct?

8 A That is correct.

9 Q What time of night was it?

10 A I would say when I left there it was approximately
11 nine o'clock.

12 Q What was discussed concerning the sale that it
13 should take 20 or 30 minutes to come to an agreement?

14 A It looks as if he was doubting whether I could
15 raise \$50,000.00 or not.

16 Q What did you tell him in reply to that?

17 A I told him when he replied to that, I told him to
18 write up his agreement, and when he got the deed ready I
19 will have the \$50,000.00. "Don't you worry about that", I
20 said, "All you have to do is just deliver the deed." Has Chim
21 put on this agreement on completion of the title, naturally
22 he would have to have the title examined.

23 Q Did you make that suggestion?

24 A Yes, sir.

25 Q What was the reference in the agreement to farm

1 complete, what does cover?

2 A He was the one that spoke up and suggested that.
3 He said, "I will sell it to you complete, everything there."
4 I said, "Don't you have a lot of cattle up there?" He said,
5 "No, don't have but three heifers on the farm."

6 Q Was any conversation had about any tobacco sticks?

7 A I don't remember anything about any tobacco sticks.
8 That was everything that was said about being on the place
9 that I know of.

10 Q Had you ever attempted to buy this property before?

11 A Yes, sir, some years back. I would say some years,
12 some several times I said something to him about it.

13 Q Did you ever make him an offer before?

14 A I did.

15 Q Did he accept it?

16 A He did.

17 Q What happened on that occasion?

18 A Just the verbal agreement, backed out. Just like
19 he tried to back out of this one. That was seven or eight
20 years ago, exactly after the past war. Hadn't had it
21 very long.

22 Q What did you offer him for it at that time?

23 A \$20,000.00. That is what he said he would take
24 for it.

25 Q He said -- Is that the reason you requested the

W. O. Lucy - Direct

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1 written agreement at this time?

2 A That is correct.

3 Q Was there ever any idea of joke or bluff on your
4 part?

5 A None whatsoever.

6 Q Did Mr. Zehmer do or say anything to indicate to
7 you that he was joking or calling it a bluff?

8 A Not that night.

9 Q When did you first hear that?

10 A The first he said about that was the next night,
11 at Mr. Batte's. He told me he didn't want to hold me to
12 this agreement, that I was too tight. I told him no, I
13 wasn't, I wasn't too tight at all, I knew what I was doing,
14 and I was going through with it. Also said that that wasn't
15 the first time I had been stuck.

16 Q Did he say that he thought you would be stuck
17 if you paid \$50,000.00 for it?

18 A He did.

19 Q Did Mrs. Zehmer make any statement at that time?

20 A Mrs. Zehmer walked by during the conversation,
21 just walked up, several of us standing there, and she
22 said, "You paid too much, what is the matter, sold it to you
23 too cheap?" Something to that effect.

24 Q Did you make any reply to that?

25 A No, I didn't.

1 Q After this transaction on Saturday night, Mr. Lucy,
2 what did you proceed to do with reference to getting the
3 contract completed?

4 A The first thing I did was to put that call in to
5 my brother on Sunday.

6 Q Who is that?

7 A Mr. J. C. Lucy who lives here. I told him what
8 I had done, I tried to get in touch with him that day. He
9 was in Richmond at the hospital with his wife, never got in
10 touch with him until that night. Told him what I had done
11 and wanted to know if he wanted half interest in it.

12 Q Did Mr. Lucy agree to take half interest in the
13 property?

14 A He did.

15 Q What did you proceed then to do with reference to
16 the title?

17 A On Monday I saw Mr. Barrow and asked him if he would
18 examine the title and give me an abstract. He said that he
19 would in a few days.

20 Q Monday would have been the 23rd of December, 1952,
21 the day before Christmas. Did he examine the title at that
22 time or after Christmas?

23 A After Christmas, and he wrote me. I think you
24 have the abstract there, he wrote me around the first of the
25 year, I believe it was.

1 Q I hand you a letter written on the stationery of
2 B. Hunter Barrow, dated December 31, 1952, reporting on the
3 title to this property. Is that the letter?

4 A Yes.

5 NOTE: This letter, being on two pages, is
6 now marked and filed as Exhibit 6.

7 This letter, on the stationery of B. Hunter
8 Barrow, Attorney at Law, Dinwiddie, Virginia, dated
9 December 31, 1952, reads as follows:

10 "Mr. W. O. Lucy, Dinwiddie, Virginia.

11 Dear Mr. Lucy: In accordance with your request,
12 I have examined the title to the tract of land in
13 Darvills District, Dinwiddie County, Virginia,
14 charged on the 1952 Land Books as 471.6 acres,
15 more or less, in the name of A. H. Zehmer from
16 February 10, 1939 to date; this examination
17 is made in accordance with and subject to the
18 indexes to the various records found in use in
19 said Clerk's Office and all references are to the
20 records there.

21 The tract of land under examination is charged
22 on the 1952 Land Books as 471.6 acres, value of
23 land \$5,660.00, buildings \$640.00, total \$6,300.00,
24 taxes \$116.55. The taxes have been paid through
25 1952.

1 That by deed dated December 14, 1938, recorded
2 February 10, 1939 in DB 62, Page 600, William
3 Earle White, special commissioner, conveyed to
4 J. H. Ferguson, with special warranty of title,
5 all that certain tract or parcel of land, lying
6 and being in Darvills Magisterial District,
7 Dinwiddie County, Virginia, State of Virginia,
8 containing 300 acres more or less, and adjoining
9 the lands of Albert Hone, Walter Baskerville,
10 Doyle and others; being the same tract of land
11 on which A. G. Ferguson formerly resided and
12 which was divided by the will of Mrs. M. L.
13 Ferguson, dated October 24, 1911, and recorded in
14 the Clerk's Office of the Circuit Court of
15 Dinwiddie County, Virginia, in Will Book 10,
16 Page 350, and described in said will as bounded
17 on the north by W. G. Bridgman and Arthur Tucker,
18 on the east by Albert Hone, Batte and Ligon,
19 on the south by Lee Doyle, and J. H. Coleman, and
20 on the west by E. H. Bishop, Arthur Tucker and
21 T. W. Echols.

22 Memo: This deed was made by the special
23 commissioner in the Chancery Suit styled
24 J. H. Ferguson vs. Cralle Ferguson, et al.

25 That by deed dated November 20, 1943, recorded

1 December 4, 1943 in DB 69, Page 167, J. H.
2 Ferguson and wife conveyed to A. Hardy Zehmer,
3 with general warranty and English covenant of
4 title, the following described property:

5 All that certain tract or parcel of land,
6 with the improvements thereon and appurtenances
7 thereto belonging, lying in Darvills Magisterial
8 District, Dinwiddie County, Virginia, on both
9 sides of State Route No. 40, containing 471.6
10 acres, be the same more or less, and bounded on the
11 north by the lands of Gunn Brothers and Bridgeman,
12 on the east by lands now or formerly belonging
13 to the Hone Estate, Deckers, Bowen, State Route
14 No. 40, the old Criers Road and lands of Doyle on
15 the south by the lands of Bowen, Doyle and Coleman,
16 and on the west by the lands of Rogers, Gunn
17 Brothers, the Bishop Estate, Echols, the Bridgeman,
18 the meets and bounds of said tract hereby conveyed
19 being set forth on a certain plat of said property
20 made by J. W. Pugh, Registered Engineer, dated
21 August 7-9, 1941, which is recorded in the Clerk's
22 Office of the Circuit Court of Dinwiddie County,
23 Virginia, in plat book two, at Page 80-A; and
24 being in all respects the same property conveyed
25 to the said J. H. Ferguson by deed from William

1 Earle White, special commissioner, dated
2 December 14, 1938 in which said tract is described
3 as containing only 300 acres, more^{or}/less, and which
4 said deed is recorded in the aforesaid Clerk's
5 Office in deed book 62, at Page 600.

6 The grantors expressly reserve the family
7 cemetery on said property, situated about 40 yards
8 northwest of the residence on said property,
9 which is now surrounded by an iron fence, the said
10 cemetery occupying a space approximately 18 by 20
11 yards, together with the right of way over the
12 other land hereby conveyed for ingress to and
13 egress from said cemetery for the grantors, their
14 heirs and all other heirs at law of the late
15 M. L. Ferguson, who formerly owned said tract of
16 land hereby conveyed.

17 Memo: It is to be noted^{that}/in the prior deed
18 to J. H. Ferguson the land is described as
19 300 acres, more or less, while in the above
20 conveyance the land is described as 471.6 acres,
21 /more or less, as shown on plat of J. W. Pugh,
22 R. E. which is recorded with the deed.

23 I do not find any liens or transfers binding
24 or affecting the property during the period of
25 this examination and subject to the above noted

1 comment, I am of the opinion that A. H. Zehmer
2 can convey the same by proper deed.

3 Respectfully submitted (signed) B. Hunter
4 Barrow, Attorney."

5 Q After receiving the certificate of title from
6 your attorney on December 31, did you write the letter of
7 January 2 to Mr. and Mrs. Zehmer advising them that you
8 were ready to close the deal at their convenience?

9 A That is right.

10 Q Did you mail the letter of January 2 immediately?

11 A Yes, sir.

12 Q When did you receive a reply to the letter?

13 A On the 14th of January.

14 Q Is that the letter that you replied to (Exhibit 4)?

15 A That is the letter I received in reply to the
16 one of January 2.

17 Q Do you recall on what date you received this
18 letter?

19 A On the 14th, I remember that.

20 Q How do you happen to remember that?

21 A I noticed the letter was written on the 10th,
22 mailed on the 13th and I received it on the 14th.

23 NOTE: Exhibit 3 formerly introduced into
24 the record is a letter, which apparently was mailed
25 in the envelope, also marked in the record as

1 Exhibit No. 4.

2 Q Had you discussed the deal with Mr. Zehmer between
3 December 21 and the time you received this letter?

4 A Yes, I saw him at that party.

5 Q I mean after the party?

6 A After that I was by his place, went in the
7 lunchroom. When I first got there I asked him would he
8 have the deed ready for me soon. That is the first time I
9 knew that he made out like he was joking, that he wasn't
10 going to sell it.

11 We went in the lunchroom and sat down, had a cup
12 of coffee, and a sandwich. I told him, sitting there by
13 him, I said, "Hardy, you know you sold that place fair and
14 square." He said, "Oh, that was just whiskey talking."
15 Those are the very words that he used. I just shut up right
16 there, never said another word in regard to that.

17 We sat there and drank the coffee, and ate the
18 sandwich. Few minutes we left.

19 Q Who was present at that time?

20 A Mr. Barrow.

21 Q You mean J. Hunter Barrow of Dinwiddie County?

22 A That is right.

23 Q Were you with him at the time?

24 A That is right.

25 Q Were you prepared to pay the purchase price upon

1 delivery of the deed at anytime after the title was examined?

2 A Yes, sir.

3 Q Are you prepared to do so now?

4 A Yes, sir.

5 Q Do you offer to do so now?

6 A Yes, sir.

7 Q Is \$50,000.00 a fair and reasonable price for this
8 property? As of December 20, 1952, do you think?

9 A I think so.

10 Q And approximately its value?

11 A Yes, sir.

12 Q As of that date?

13 A Yes, sir.

14 Q This agreement signed by Mr. Zehmer and Mrs. Zehmer,
15 Exhibit 1, was that handed to you by Mr. Zehmer or did you
16 grab it up off the counter?

17 A It was handed to me by Mr. Zehmer.

18 Q What statement if any was made at that time?

19 A Wasn't any statement made in regard to that.

20 Q Was this handed to you in response to your request
21 to put his agreement in writing, to have his wife sign it?

22 A Yes, sir. That was written the first one out with
23 the words I do hereby agree to sell, and I requested that he
24 write it out that "We do hereby agree to sell" so Mrs.
25 Zehmer could sign it, too.

1 Q You deny that you requested to see it and then
2 picked it up off of the counter?

3 A Absolutely.

4 Q I do not recall whether you were asked this
5 question or not: Did your brother J. C. Lucy agree at the
6 time of your telephone call to him on December 21, to
7 purchase a half interest in this property with you?

8 A He did.

9 Q What is his occupation?

10 A He is in the lumber business, and mercantile
11 business.

12 Q You didn't name them all?

13 A No, sir.

14
15 CROSS EXAMINATION

16 BY MR. WHITE:

17 Q Mr. Lucy, how many drinks had you had that night?

18 A How many drinks had I had?

19 Q Yes.

20 A Couple.

21 Q Had you had any before you came to Mr. Zahmer's
22 place at all?

23 A No, sir.

24 Q Did you bring some whiskey there with you?

25 A I had some in my pocket.

1 Q Full bottle or partly full?

2 A Partly filled bottle.

3 Q You customarily carry it around with you?

4 A No, sir.

5 Q How did you happen to have it with you that night?

6 A Just had it in the car, slipped it in my pocket
7 when I came in.

8 Q Is that a customary way of doing it, or was that
9 unusual procedure on your part?

10 A At that place I often stop there and gave Hardy a
11 drink. He always takes one when I offer it to him.

12 Q You knew Hardy would take a drink?

13 A Yes, sir.

14 Q And you carried ^{it} in there for the purpose of giving
15 him a drink if he wanted it?

16 A If you wanted -- if he wanted one, yes.

17 Q You went in, he wasn't there at the time you went
18 in?

19 A He came in in a very few minutes after.

20 Q How many drinks did Hardy take that night?

21 A I don't remember, I ^{know he} never took over one or two
22 in my presence. How many he had before I don't know.

23 Q You were in there you said about 45 minutes you
24 think in all?

25 A Not over that.

1 Q What did you go in there for, just to offer him
2 a drink, or did you go in there with the intention of trying
3 to buy the Ferguson Farm?

4 A Went there with the intention of trying to buy the
5 farm.

6 Q Was there any particular reason why you should
7 pick that particular night to buy the Ferguson Farm?

8 A No, sir.

9 Q How long had it been since you had discussed
10 buying the Ferguson Farm with him prior to that time?

11 A I don't remember.

12 Q Weeks or months?

13 A Months, I know.

14 Q This was the Saturday night before Christmas
15 about 8 o'clock, and you had driven from your home up to
16 McKenney?

17 A I had driven up there that night earlier.

18 Q Was that the sole purpose of your trip up there
19 that night?

20 A No, sir.

21 Q Did you come in to see some other people that
22 were there besides Mr. Zehmer?

23 A Had I come to see other people?

24 Q Yes.

25 A Yes, I saw several other people.

1 Q The purpose of your going to McKenney was to see
2 some other people?

3 A Yes, to take one man that worked for me, too.
4 The main purpose I went to McKenney to begin with earlier.

5 Q This was an afterthought, this thing about buying
6 the Ferguson Farm, is that right?

7 A What is that?

8 Q An after thought, while you were there you just
9 thought you would drop by and see if you could buy the
10 Ferguson Farm from Mr. Zehmer that night?

11 A That was my intention when I went in there.

12 Q You formed that intention after you got to
13 McKenney?

14 A That is right.

15 Q Had you seen Mr. Zehmer prior to that time while
16 you were in McKenney that night?

17 A No, sir.

18 Q So you went into Mr. Zehmer's place, took a
19 bottle of liquor with you in case Mr. Zehmer wanted a
20 drink, with the idea of trying to see if you could buy the
21 Ferguson Farm, is that your statement?

22 A I didn't go there to give him a drink with the
23 idea of buying the farm, that intention.

24 Q You said you took liquor there because if he
25 wanted a drink you could give him one?

1 A Yes.

2 Q And you went in with the intention of buying,
3 to see if he would sell the Ferguson Farm. You said both
4 those things are true?

5 A That is right.

6 Q And you did them both at the same time?

7 A That is right.

8 Q You went in there just as you have said, when you
9 got in there had you recently been over the Ferguson Farm
10 prior to going into Mr. Zehmer's place that night?

11 A Yes, sir.

12 Q How recently had you been over that farm?

13 A I had been in there within the last three weeks.

14 Q You had been looking it over?

15 A Oh, yes.

16 Q Had you asked Mr. Zehmer's permission if you could
17 go over and look at the place?

18 A No, sir.

19 Q You hadn't said anything to Mr. Zehmer about the
20 place, but you had been over to his place without his
21 knowledge within three weeks of the time you went to his
22 home that night, is that right?

23 A I looked at it before, went over it before.

24 Q But you had gone over it as recently as three
25 weeks before?

1 A Ridden up there and went over it, and had not
2 gone over the whole thing.

3 Q But you had gone over it three weeks before?

4 A No.

5 Q What did you do?

6 A Didn't go over the whole thing. I said I had been
7 up there three weeks before. But I had looked over the
8 whole place before that, previous times before.

9 Q When you went up there three weeks before, what
10 was the purpose of this visit?

11 A Just rode up there is all.

12 Q You just rode up there?

13 A Rode around through it, you can drive around
14 in it, you know.

15 Q You are familiar with the place?

16 A Yes.

17 Q You did drive all around through it?

18 A Where there were roads.

19 Q When you went in the place that night Mrs. Zehmer
20 was there?

21 A Yes, sir.

22 Q And Mr. Zehmer came in a little bit later?

23 A Yes, sir.

24 Q You opened the negotiations for the Ferguson
25 Farm while you and Mr. Zehmer were having a drink together,

1 is that right?

2 A The first mention of the Ferguson Farm had been
3 mentioned before we had the drink.

4 Q Before you had any drink at all?

5 A Yes, sir.

6 Q In other words, you started talking about the
7 Ferguson Farm, and then you all had the drink. Did you have
8 a drink with him?

9 A Yes, I had a drink with him.

10 Q I believe you stated you opened up the conversation
11 about the Ferguson Farm, asked him if he had sold it, and he
12 said he hadn't?

13 A That is right.

14 Q And then the next thing I recall you testified to
15 was you said that you bet he wouldn't take \$50,000.00 for
16 that farm. Was that the next sentence, or was some
17 conversation in between those two remarks?

18 A I don't remember whether it was any other
19 conversation between those two remarks or not. I know he
20 said he hadn't sold it. I told him that I reckon he wouldn't
21 take \$50,000.00 for it, and he said yes, he would.

22 Q You all had had your drink at that time?

23 A Not the time the \$50,000.00 was mentioned, but
24 we did have a drink.

25 Q And you said you had some discussion about he doubted

1 if you had \$50,000.00. Can you recall what was said by
2 both of you in respect to whether you did or did not have
3 \$50,000.00?

4 A I told him I would have the \$50,000.00 the time
5 he got the [title ready.

6 Q What did he tell you about not having the
7 \$50,000.00, do you remember what he said?

8 A He said I didn't have \$50,000.00 in cash.

9 Q You all were kidding one another at the time about
10 that?

11 A No, sir. It might have been kidding about having
12 the \$50,000.00 in cash.

13 Q You were kidding about whether or not you had
14 \$50,000.00 in cash?

15 A I told him I could raise the \$50,000.00..

16 Q Did you tell him how you were going to raise it?

17 A No, sir.

18 Q Did you have in mind offering your brother half
19 interest in it at that time?

20 A I could have raised it without that.

21 Q Did you have in mind offering your brother half
22 interest in it at the time you were talking to Mr. Zehmer
23 that night?

24 A Yes, sir.

25 Q That is what you figured you were going to do,

1 you were going to syndicate it, between you and your brother?

2 A Yes, sir.

3 Q You weren't feeling your drinks at all at that
4 time, were you?

5 A Oh, yes, I wouldn't say I wasn't feeling them,
6 but wasn't drunk. There is a big difference in being drunk
7 and feeling your drinks.

8 Q Feeling happy?

9 A Looks like I must have been feeling rich.

10 Q The point is, you were feeling the liquor that
11 you were drinking, you knew you had some drinks?

12 A Not to the extent of not knowing what I was doing.

13 Q But you felt it, you knew you had had some drinks?

14 A I knew I had had a drink.

15 Q The affect of the drink was there, you felt it,
16 is that right?

17 A No.

18 Q You didn't feel them?

19 A Not to the extent of not knowing what I was doing.

20 Q I asked you whether or not you had felt the
21 affects of the liquor that you had drank. Did you?

22 A Sure, I could tell I had a drink.

23 Q What did Mr. Zehmer do, did he show you ^{any of} the affects
24 of drinking liquor, could you tell by looking at him?

25 A I couldn't tell at the time he came in.

1 Q What about after you talked to him, and after you
2 took some drinks with him?

3 A I never can tell when he is drinking or not.
4 I figured from the way he transacted the business that he
5 wasn't.

6 Q You customarily make \$50,000.00 deals on pieces of
7 property like that? With a little piece of paper like that.

8 A Yes, sir.

9 Q Not over a bottle of liquor?

10 A Not over a bottle of liquor.

11 Q Mr. Lucy, why was that paper written, at your
12 suggestion?

13 A Yes, sir. He wrote the one out in the single,
14 first.

15 Q Where were you sitting and where was he sitting
16 at the time this paper was written?

17 A I was on the stool at the counter, and he across
18 on the other side.

19 Q How did you know the first paper was in the
20 singular, what was written on the first paper, sitting
21 across from him? Did he have it upside down?

22 A He was right at me, across the table.

23 Q I thought you were sitting opposite each other.

24 A As I said a while ago, he wrote it out and I had
25 it here. I could tell from the way he started off, "I do

1 hereby agree--" sitting across the table from him, I can
2 tell what is on that paper upside down in front of me by
3 sitting across the table.

4 Q You can read it upside down?

5 A He showed me what he had.

6 Q Showed it to you?

7 A And did away with it after he tore it up,
8 and wrote one "We do hereby --".

9 Q Did he show you the second one that he wrote?

10 A He gave it to me, yes, sir.

11 Q At the time he wrote it?

12 A After he had it signed.

13 Q Did he have it signed at the time --

14 A He didn't show it to me before he had it signed.

15 Q But he showed you the other one before?

16 A He signed the other one and nobody but his
17 signature on it, just his signature.

18 Q He finished it?

19 A Sure.

20 Q I thought you testified a while ago that he did not.
21 So he wrote the whole thing out and exhibited it to you
22 after he had signed it, and you wouldn't take it, is that
23 your testimony now?

24 A I told you that I told him they -- told him he
25 better change that and write it that we do hereby.

1 Q You are testifying now that Mr. Zehmer wrote a
2 complete paper, signed it, and handed it to you, and that
3 you told him he would have to change it and get it signed by
4 his wife, and he destroyed a complete paper?

5 A That is true.

6 Q That is your testimony now?

7 A Yes, sir.

8 Q The second time he didn't show you the paper,
9 is that right?

10 A Until after he had it signed.

11 Q Until after he signed it?

12 A Didn't show me the first one until after he signed
13 it.

14 Q Then he went up and got his wife to sign. Did you
15 hear any conversation between his wife and himself about the
16 matter?

17 A No, sir. She said in my presence she would sign
18 it for \$50,000.00.

19 Q She said she would sign it for \$50,000.00?

20 A That is right.

21 Q Was that the very first of the conversation that
22 you and Mr. Zehmer were having?

23 A That is when he was writing, I spoke up and asked
24 him to write it for both of them so both of them could sign
25 it.

1 Q After he had written the first one out?

2 A After he wrote the first one out.

3 Q Where had she been in the meantime while he was
4 doing that?

5 A She was behind the counter going back and forth.

6 Q Working, you mean?

7 A Had this waitress there, and she was probably
8 helping her clean up or something.

9 Q They were moving around?

10 A She was not standing right where we were standing.
11 She was back over there.

12 Q She was moving around?

13 A Yes.

14 Q When Mr. Zehmer brought you this paper you were
15 sitting down at the counter?

16 A That is right.

17 Q And he was on the other side of the counter?

18 A Yes.

19 Q You said that he handed it to you and you took
20 it in your hand?

21 A Folded it up and put it in my pocket.

22 Q When you put it in your pocket, sir, did you read it
23 first?

24 A Sure, I did.

25 Q When he handed it to you did he say anything to

1 you?

2 A In regard to that?

3 Q Yes, when he handed you the paper, did he make
4 any remark at all?

5 A No, sir.

6 Q He just came back?

7 A That is when I offered him five dollars.

8 Q You offered him five dollars?

9 A Asking him to give me a receipt for it, he said,
10 "You don't need a --" I mean he said, "I don't need any
11 money. You got the signed agreement there.

12 Q He told you that you didn't need to give him the
13 five dollars, and you put the money back in your pocket?

14 A Absolutely.

15 Q And you left. Wasn't anything further said?

16 A No, sir.

17 Q The next time that you saw Mr. Zehmer was I believe
18 you testified at the party of Mr. Batte's house?

19 A Yes.

20 Q Sunday afternoon, is that right?

21 A That is right.

22 Q In the afternoon?

23 A Yes, about six o'clock, I think it was.

24 Q At that time you had this conversation with

25 Mr. Zehmer, and he told you that he would let you out because

1 you were too tight and didn't want you stuck, or something
2 like that?

3 A He told^{me} he wanted to let me out of that agreement,
4 said I was too tight.

5 Q Did he say anything else, either of you say anything
6 about your getting stuck?

7 A He said as well as I remember, he said, "I don't
8 want to stick you. I don't want to^{hold you} that agreement. You were
9 too tight, didn't know what you were doing."

10 Q Do you remember?

11 A I said, "No, I was not. I have been stuck before,
12 I am going through with it."

13 Q That was before you had talked to your brother
14 over the telephone?

15 A That is right.

16 Q You didn't talk to your brother until that night?

17 A About ten o'clock that night.

18 Q Then the next conversation that you had with
19 Mr. Zehmer was when?

20 A Tuesday night.

21 Q At his place?

22 A Yes, sir.

23 Q You had Mr. Barrow with you?

24 A Yes, sir.

25 Q How did that happen?

1 A He was just riding with me.

2 Q Did you go up there for the purpose of seeing
3 Mr. Zehmer?

4 A Yes, sir.

5 Q Did you ask him to go with you?

6 A Yes, sir. He said he would go with me.

7 Q Did you particularly want Mr. Barrow with you
8 during the conversation you were going to have with
9 Mr. Zehmer that night?

10 A No, sir.

11 Q You had no reason you say, to think that Mr. Zehmer
12 did not regard this as a contract at that time?

13 A I did not.

14 Q Your conversation with Mr. Zehmer at Mr. Batt's
15 house then hadn't made the impression on you he did not
16 regard it as a contract?

17 A Did not?

18 Q Yes.

19 A No, sir.

20 Q Mr. Barrow just happened to be along?

21 A Yes, sir.

22 Q You had the conversation, and you knew that
23 Tuesday night, anyhow, that Mr. Zehmer didn't regard himself
24 as having a contract with you?

25 A That is the first time. He told me, he said that

1 he wasn't going to sell it. I said, "You know you sold that
2 place fair and square." I told him that Saturday night.

3 Q On that previous occasion when you had discussed
4 buying this farm belonging to Mr. Zehmer, he did tell you
5 that he was saving it for his son, it wasn't for sale?

6 A He never mentioned his son to me. He didn't mention
7 saving it for his son, no, sir.

8 Q Just told you it wasn't for sale?

9 A He had told me it wasn't for sale.

10 Q He didn't mention his son?

11 A No, sir.

12 Q You didn't think it was any joke about this matter
13 at all?

14 A I didn't, no, sir.

15 Q You feel that you were sober at the time?

16 A As far as knowing what I was doing, yes, sir.

17 I figured if a man goes out that far in selling something
18 it is no joke.

19 Q You deny that Mr. Zehmer told you before you left
20 that place that this was no deal?

21 A Yes, sir.

22 Q The reason he refused your money was that he didn't
23 intend to make any contract, you deny that?

24 A I deny that.

25 Q You deny that the discussion that you had in

1 respect to whether you had \$50,000.00 or not was a joke?

2 A Yes, sir. Everybody knew he didn't expect me to
3 have \$50,000.00 in my pocket. Wasn't going to pay for the
4 place that night.

5 Q Did you have \$50,000.00 in the bank?

6 A I was capable of raising \$50,000.00.

7 Q As a matter of fact, you raised it by getting
8 your brother to go in with you?

9 A Not necessarily.

10 Q But you did do that?

11 A I did.

12 Q You did^{it} at once, you had it in mind at the time
13 that is what you were going to do?

14 A Yes.

15 Q You don't remember the detail of the conversation
16 between you and Mr. Zehmer with respect to whether you had
17 or didn't have \$50,000.00?

18 A How was that again?

19 Q You don't recall in detail any more conversation
20 between you and Mr. Zehmer with respect to whether you had
21 or hadn't \$50,000.00? You had some conversation about it,
22 do you remember anything definitely he said or that you
23 said on that subject that you haven't testified to?

24 A I know he mentioned maybe joking me about not
25 having \$50,000.00, said, "You haven't got that kind of

1 money." I said, "You sell me the place and I will show you
2 whether I can get \$50,000.00 or not."

3 Q It was sort of a dare between you fellows that
4 you didn't have \$50,000.00, and you were going to show him,
5 isn't that right?

6 A No, sir.

7 Q You didn't think that he was drunk?

8 A No, sir, as far as I knew he was not.

9
10 REDIRECT EXAMINATION

11 BY MR. BAUGH:

12 Q Did you pay Mr. Barrow for examining the title to
13 this property?

14 A Yes, sir.

15 Q What amount?

16 A \$50.00.

17 Q The question has been asked you why Mr. Barrow was
18 with you at McKenney that night. Is he a personal friend
19 of yours, and are you all accustomed to riding around together
20 at night occasionally?

21 A Yes, sir.

22 Q Was that the only reason he was with you that
23 night?

24 A Yes, sir.

25 Q With reference to the \$50,000.00, had you not sold

1 half interest in the property to your brother, could you
2 have raised the \$50,000.00 on this property and other
3 property that you owned?

4 A Yes, sir.

5 Q If I understand your testimony correctly,
6 Mr. Lucy: You testified that you did offer Mr. Zehmer
7 \$50,000.00 for the farm, and that he agreed to sell it
8 for \$50,000.00?

9 A Yes, sir.

10 Q And that if he would put that in writing, you would
11 take the property?

12 A Providing title was satisfactory.

13 Q Provided title was satisfactory?

14 A Yes, sir.

15 Q And does this agreement Exhibit A embody the
16 offer and acceptance and the conclusion of that deal for
17 that time?

18 A Yes, sir.

19 Q Did you think that this memorandum in writing
20 from your experience of a number of years in the lumber
21 business was a sufficient agreement for the sale?

22 MR. WHITE: I object to the question on the
23 ground that is cross examination of your own
24 witness. This is a question for the Court to
25 determine.

1 MR. BAUGH: I will withdraw the question.

2 Q After you received this piece of paper, Mr. Lucy,
3 was there anything left to be done about closing the deal
4 except to have the title examined, raise the purchase price
5 and receive the deed?

6 A No, sir.

7 Q Do you know the assessed value of this property
8 for taxation purposes in Dinwiddie County?

9 A I do not.

10 Q Do --

11 MR. HARRISON: It is stipulated by and between
12 counsel that the Ferguson Farm is assessed at
13 \$6,300.00 of which \$6,040.00 -- excuse me, assessed
14 at \$6,300.00 of which \$640.00 represents the
15 assessed value of the buildings, and \$5,660.00
16 represents the assessed value of the land. Taxes
17 for 1952 were \$116.55.

18 And further this deponent saith not.

19

20 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.

21

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1
2
3 MR. J. C. LUCY, one of the complainants,
4 first being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HARRISON:

7 Q Please state your name and age.

8 A J. C. Lucy, 48 years of age. Occupation, lumberman,
9 merchant.

10 Q You reside at Dolphin in Brunswick County?

11 A I live there, but my office is here at
12 Lawrenceville.

13 Q You are a former commissioner of revenue of
14 Brunswick County?

15 A Yes, sir.

16 Q Presently a member of the Board of Supervisors
17 from Sturgeon District?

18 A Yes, sir.

19 Q You are a brother of W. O. Lucy and one of the
20 complainants in this suit?

21 A Yes, sr.

22 Q Do you have any interest in the purchase of the
23 Ferguson Farm located at Darvills District, Dinwiddie County,
24 Virginia?

25 A Yes, sir.

Lucy - Direct

129.

1 Q Made by your brother W. O. Lucy from Mr. A. H.
2 Zehmer and wife, December, 1952?

3 A Yes, sir. I agreed to purchase half interest in
4 it.

5 Q From the date of the title examination by
6 B. Hunter Barrow, an Attorney practicing law at Dinwiddie
7 Courthouse, Virginia, have you and W. O. Lucy been in a
8 position to pay \$50,000.00 cash for this property?

9 A Yes, sir.

10 Q Could you have done it individually if necessary?

11 A I think so.

12 Q Could W. O. Lucy have done it individually if
13 necessary?

14 A I think so, could have done it at this bank here.

15 Q Do you consider \$50,000.00 the reasonable fair
16 market value of the property as of December 20, 1952?

17 A I do.

18 Q As one of the parties interested in this purchase,
19 are you still ready and willing to pay the entire sum of
20 \$50,000.00 for this purchase for your part thereof?

21 A Yes, sir.

22 Q Do you offer to do so in open Court?

23 A Yes, sir, this afternoon.

24 Q It has been testified by W. O. Lucy, one of the
25 complainants, that he called you on Sunday night, which would

Lucy - Direct

130.

1 be December 21, 1952, and asked if you would be interested
2 in taking a half interest in this purchase made by him from
3 Mr. Zehmer, is that true?

4 A That is true.

5 Q That was when you agreed to come in with
6 W. O. Lucy on the purchase?

7 A Having confidence in his judgment I agreed to do
8 it, to purchase it without looking at it.

9
10 CROSS EXAMINATION

11 BY MR. GOODE:

12 Q Mr. Lucy, you didn't talk with Mr. Zehmer about
13 this farm at all, did you?

14 A No, sir. My brother called me on the night of
15 the 21st, told me what he had done, that he had purchased
16 this farm, and to be perfectly frank with you I didn't know
17 who he purchased it from.

18 Q Had you ever been over or appraised the farm,
19 or looked at it yourself?

20 A Yes, sir.

21 Q Had you prior to this time?

22 A No, sir.

23 Q And in other words, prior to that time you didn't
24 know anything about the farm or who your brother was buying
25 it from?

1 A No, sir, I didn't know about it. Having explicit
2 confidence in his judgment if he was willing to give
3 \$50,000.00 for it, \$25,000.00 or \$10,000.00 I was agreeable.

4 Q You told him that when he called you over the
5 telephone Sunday night?

6 A Yes, sir, I told him I would take half of it.

7 Q You didn't sign any papers to that effect?

8 A No, sir, but I expected of course to do that.
9 We still have a few people whose words are as good as their
10 bond. I didn't have all of my part of the money in my
11 pocket, but arrangements could be made for the money.

12 Q In other words, you were not known in the deal
13 at all when they were discussing it at McKenney?

14 A No, sir.

15 Q And the telephone call ---

16 A So far as I know I was not.

17 Q The telephone call and arrangements you made were
18 after that?

19 A Yes, sir, on the night of the 21st, ^{if} I recall
20 correctly.

21
22 REDIRECT EXAMINATION

23 BY MR. HARRISON:

24 Q You have testified on cross examination and said
25 on the Monday following your conversation with W. O. Lucy on

1 Sunday you made arrangements for your half of the purchase
2 money?

3 A What I didn't have. Most of it I did make
4 arrangements for. I had part of it.

5 Q What arrangements did you make if that is not
6 too indelicate a question?

7 A I went to a local bank and told them that I had
8 recently purchased, told them the story. I had recently
9 purchased a half interest in a \$50,000.00 farm with my
10 brother, and I was going to need from \$15,000.00 to
11 \$20,000.00. Of course they said all right. I have a line
12 there, as you know. I have a line and I can borrow to the
13 line at anytime.

14 BY MR. GOODE:

15 Q You didn't have to sign anything at all at that
16 time, you just told them you were going to need it?

17 A That is right.

18 And further this deponent saith not.
19

20 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.
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Do not print

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STATE OF VIRGINIA
CITY OF RICHMOND, to wit

I, H. James Edwards, a Notary Public for the State of Virginia at Large, do hereby certify that the foregoing depositions of Walter Huskey, Paul McClelland, Rennie W. Bridgman, Mrs. A. H. Zehmer, A. Hardy Zehmer, Albert Carr, W. O. Lucy and J. C. Lucy, were duly taken and sworn to before me at the time, place, and for the purpose set out in the caption hereto; and further that the signatures to the depositions were waived by agreement of counsel.

I further certify that Exhibits 1 through 6, respectively, were filed with me as Notary, and are returned to the Clerk of the Court herewith.

Given under my hand this 17 day of August, 1953.

H. James Edwards
NOTARY PUBLIC FOR THE STATE OF VIRGINIA
AT LARGE

My commission expires October 5, 1956.