

REPORTER'S TRANSCRIPT

ORIGINAL

VIRGINIA:

IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

W. O. LUCY and J. C. LUCY

-vs-

A. H. ZEHMER and IDA P. ZEHMER

HEARING ON

September 9, 1953

*Filed:
SEP 18 1953
H. J. Edwards*

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

Hearing on
September 9, 1953

I N D E X

(Listed Chronologically)

	<u>DIRECT</u>	<u>CROSS</u>
Ethel J. Chappell	3	8
S. E. Winn, Jr.	19	21
John Will Rives	23	24

Reported by:

H. Jas. Edwards

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VIRGINIA:

IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

W. O. LUCY and J. C. LUCY (Complainants)

-VS-

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

The depositions of Ethel J. Chappell, and others, taken before H. James Edwards, a Notary Public for the State of Virginia at Large, by agreement of counsel, on this the 9th day of September, 1953, at Dinwiddie Courthouse, Virginia; said depositions taken to be read as evidence in behalf of the respondents herein.

APPEARANCES

Mr. A. S. Harrison, Jr., of Lawrenceville, Virginia, and Mr. Emerson D. Baugh, of Lawrenceville, Virginia, counsel for the complainants;

Mr. William Earle White, of Petersburg, Virginia, and Mr. Morton G. Goode, of Dinwiddie, Virginia, counsel for the respondents.

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ETHEL J. CHAPPELL, a witness introduced
in behalf of the respondents, first being duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. WHITE:

Q Please state your name.

A Ethel J. Chappell.

Q Where do you live?

A McKenny.

Q In December, 1952, for whom were you working?

A Hardy Zehmer.

Q Where were you working for him?

A At the lunchroom.

Q At McKenny?

A Yes.

Q Were you working for him on the night of
Saturday, December 20, 1952, the Saturday before
Christmas?

A Yes, sir.

Q Were you in the lunchroom that night?

A Yes, sir.

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

A Know him when I see him. Never have seen too

Chappell - Direct

1 much of him.

2 Q Did he come into the lunchroom that night

3 while you were there?

4 A Yes, sir.

5 Q About what time did he come in?

6 A Well, I don't know. We had closed, we usually

7 close around 9 o'clock. We were closed.

8 Q And you had closed when he came in?

9 A Yes, sir.

10 Q Who was in the lunchroom with you when

11 Mr. Lucy came in?

12 A Mrs. Zehmer and myself.

13 Q Did Mr. Zehmer come into the lunchroom later?

14 A Yes, sir.

15 Q How much later did he come in?

16 A I don't know exactly, I was busy cleaning up;

17 after he got through at the service station, it was.

18 Q Would you say it was as much as 15 or 20

19 minutes after Mr. Lucy came in that Mr. Zehmer came in?

20 A Yes, sir.

21 Q Did you or Mrs Zehmer have any conversations

22 with Mr. Lucy before Mr. Zehmer came in?

23 A I didn't. I was busy cleaning up.

24 Q Was he talking to Mrs. Zehmer or just sitting

25 there quietly?

Chappell - Direct

1 A He was mouthy.

2 Q He was mouthy?

3 A Yes.

4 Q You mean he was talking a whole lot?

5 A Yes, sir.

6 Q After Mr. Zehmer came in did he and Mr. Lucy
7 have any conversation?

8 A They were laughing and joking, talking along.

9 Q Were they doing anything else?

10 A Well, I think they took a drink or two?

11 Q They were drinking together?

12 A Yes, sir.

13 Q And laughing and talking?

14 A Yes, sir.

15 Q What were you doing while they were doing this?

16 A Finishing cleaning up and straightening up to
17 open up the next day.

18 Q You were working around the room there, in
19 other words?

20 A Yes, sir.

21 Q Did you hear any part of the conversation
22 between Mr. Zehmer and Mr. Lucy that night?

23 A Nothing but I just heard them laughing and
24 joking about the farm and things.

25 Q What did you hear them say, if you recall?

Chappell - Direct

1 A I was sweeping and all, and I heard him tell
2 Mr. Zehmer I will give you so much for the farm. He said,
3 "You haven't got that much", and he said, "Oh, yes, I will
4 give you that much."

5 Q You said they were drinking while that was
6 going on?

7 A Yes, sir. Mr. Zehmer came in, and Mr. Lucy
8 took out a bottle and took a drink together.

9 Q Did you see anything written by either of
10 these parties while you were there that night?

11 A I didn't see anything he wrote, but they
12 jotted down something on paper, and all, just might have
13 been Mr. Zehmer scribbling some foolishness and all, and
14 Mr. Lucy reached over and took it, said let me see it.

15 Q You didn't see what was on the paper, but
16 you just saw a piece of paper that was being written on?

17 A Yes. I was over there in the room, sweeping.

18 Q Mr. Lucy said what?

19 A Said, "Let me see it," and he took it.

20 Q Where was the paper when he took it?

21 A On the counter.

22 Q On the counter of the lunchroom?

23 A Yes.

24 Q You saw him pick it up and said let me see it?

25 A Yes, sir.

Chappell - Direct

1 Q Did you see him read it?

2 A Well, he looked at it, and put it in his
3 pocket.

4 Q What did he do after that?

5 A About a minute he left.

6 Q Did he and Mr. Zehmer do anything after he
7 picked the paper up other than say let me see it?

8 A Not that I recall.

9 Q Did you see any money offered?

10 A Like I said, like I said a few minutes ago
11 he got up and left.

12 Q Did you see Mr. Lucy offer Mr. Zehmer any
13 money?

14 A He had five dollars laying up, there, they
15 didn't take it.

16 Q Was that after he read the paper?

17 A Yes.

18 Q Did Mr. Zehmer say anything to Mr. Lucy about
19 the money, did you hear Mr. Zehmer say anything to
20 Mr. Lucy about the money?

21 A Told him he didn't want his money because he
22 didn't have enough money to pay for his property, and
23 wasn't going to sell his farm.

24 Q Is that what he said?

25 A It was all a joke.

Chappell - Direct

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1 Q Did Mr. Lucy take the money back?

2 A I was back there sweeping up and working
3 around, and I don't know where the money went to.

4 Q But you did hear Mr. Zehmer say he wouldn't
5 take the money, that he didn't have the money to pay
6 for the farm?

7 A Yes, he didn't want to sell it.

8 Q And Mr. Lucy left after that?

9 A Yes.

10 Q You saw them there. What condition were the
11 two of them in at the time this took place, Mrs. Chappell?

12 A Well, both appeared to be drinking right much.

13 Q Both of them appeared to be drinking right
14 much?

15 A Yes, and Mr. Lucy staggering when he went out.

16
17 CROSS EXAMINATION

18 BY MR. HARRISON:

19 Q Mrs. Chappell, during this entire time you
20 were working about the lunchroom, is that right?

21 A Yes.

22 Q Is there more than one room there?

23 A Yes.

24 Q How many rooms are there?

25 A There are two sides to it, store part and then

1 the dining room part.

2 Q Were you doing any work in the store side?

3 A Yes.

4 Q Is there a kitchen attached to it?

5 A Yes..

6 Q Were you doing any work in the kitchen?

7 A No, I wasn't, I was in the other part.

8 Q Did you go in the kitchen during the course
9 of this conversation between Mr. Zehmer and Mr. Lucy?

10 A I don't know whether I did or not.

11 Q You may have gone in the kitchen part of the
12 time?

13 A Like I said before, I don't know whether I
14 did or not.

15 Q Anyway, you do know you were working in
16 both the lunchroom and in the store?

17 A Yes.

18 Q How many people can be seated in that lunchroom?

19 A I don't know.

20 Q Approximately?

21 A We never counted them up.

22 Q Fifty?

23 A I guess so.

24 Q How long have you worked there?

25 A Four years.

Chappell - Cross

- 1 Q Do you wait on tables there?
- 2 A Yes, sir.
- 3 Q Can you seat as many as thirty?
- 4 A I reckon you can seat more than thirty. Like
5 I said, around 45 or 50, in the dining room and in the
6 other part, too.
- 7 Q What other part are you speaking of?
- 8 A Store part and the dining room.
- 9 Q How large is the store part?
- 10 A Have stools around the counter and two booths.
- 11 Q How many tables?
- 12 A Six, that will seat four, and a big one that
13 will seat six in the dining room.
- 14 Q So that it is a combination between the dining
15 room and the store part, is that right?
- 16 A Yes..
- 17 Q You were working preparing for the next day's
18 activity?
- 19 A Yes.
- 20 Q You were sweeping, filling the sugar dishes,
21 salt and pepper shakers, and what else were you doing?
- 22 A Cleaning the coffee urn.
- 23 Q What else?
- 24 A Washing glasses, cleaning off the counter and
25 things like that.

Chappell - Cross

1 Q Just doing everything that was necessary to be
2 done?

3 A Yes, everything that had to be done, and all
4 that has to be done before you leave that day.

5 Q You were the only person there doing any work,
6 is that true?

7 A Yes, sir.

8 Q You were not eavesdropping on this conversation,
9 were you? You were trying to hear what they were saying
10 or not?

11 A No, because I was trying to stay out of other
12 folks' business.

13 Q You were paying absolutely no attention to
14 what was going on between Mr. Zehmer and Mr. Lucy, were
15 you?

16 A No.

17 Q What you heard was just a scattering remark
18 now and then, isn't that true?

19 A Yes, as I was working.

20 Q You do say for the record here that Mr. W. O.
21 Lucy offered to buy from A. Hardy Zehmer, your employer,
22 the Ferguson Farm on the night of Saturday, December 20,
23 1952, you heard that, didn't you?

24 A Yes, I heard them laughing and joking about
25 buying the farm.

Chappell - Cross

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1 Q Didn't you hear Mr. Lucy offer to buy the farm,
2 Mr. Zehmer's farm?

3 A That is the same remark you just asked me
4 about.

5 Q Did you or did you not, did you hear him offer
6 to buy the farm? It is your remark that I am interested in
7 now, and not mine. What is your answer to that?

8 A Same thing, I did hear them talking about
9 buying the farm.

10 Q Did he offer to buy the farm?

11 A Or he wanted to buy it.

12 Q Ma'am?

13 A I heard him say he wanted to buy the farm.

14 Q Did you hear him offer to buy it?

15 A Yes.

16 Q Did you hear him offer \$50,000.00 for it?

17 A Yes.

18 Q Did you see Mr. Zehmer write up a memorandum
19 of agreement?

20 A I saw him write something on a piece of paper.

21 Q Did you see him sign it?

22 A No, I did not. It was just a little guest
23 check that he put some figures on or something.

24 Q Would you recognize that check if you saw it
25 again?

1 A No, because I was at a distance when he was
2 doing that. Didn't see what was on the paper.

3 Q Do you know whether or not he signed it?

4 A I didn't see the paper. I was part way across
5 the room from them.

6 Q Did you see Mrs. Zehmer sign it?

7 A No, because I was some distance away.

8 Q Did you see Mr. Zehmer go to his wife and
9 have a conversation with her and then ask her about it?

10 A No, I didn't because they were all three there
11 together, if they said anything I didn't hear it.

12 Q You say they were all three together?

13 A They were all three there close together.

14 Q You didn't see either one of them sign it?

15 A No.

16 Q So that part of that negotiation took place
17 out of your presence and out of your sight, is that true?

18 A I was at a distance of across the room.

19 Q Did you see Mr. Zehmer put the agreement down
20 on the table in front of Mr. Lucy?

21 A Time he got through writing whatever it was on
22 the paper, Mr. Lucy reached over and said, "Let's see it."
23 He took it and put it in his pocket.

24 Q He did that before showing it to Mrs. Zehmer?

25 A That is the way I saw it.

Chappell - Cross

1 Q Then what you are telling us is that Mr. Zehmer
2 wrote out the agreement and that by the time he got through
3 writing out the agreement Mr. Lucy reached over, got it and
4 put it in his pocket, is that right?

5 A Whatever it was he wrote down, I thought he
6 just fooled around with some figures.

7 Q But you are telling us that whatever it was
8 that --

9 A I was some distance across the room.

10 Q But you are saying --

11 A I was sweeping.

12 Q What you are saying here is that whatever
13 Mr. Zehmer wrote that after he got through writing Mr. Lucy
14 reached over, picked it up and put it in his pocket?

15 A Uh huh.

16 Q And that it was not taken to Mrs. Zehmer and
17 signed by her, is that right?

18 A I didn't see any of that.

19 Q So what you saw then was what Mr. Zehmer wrote,
20 and what was picked up immediately by Mr. Lucy, is that
21 right?

22 A Uh huh.

23 Q And you didn't --

24 A Time he got through putting whatever it was on
25 the paper Mr. Lucy said, "Let's see it", and he reached over

Chappell - Cross

1 there and took it.

2 Q You never saw Mrs. Zehmer sign it?

3 A No, I did not.

4 Q They were all three right there together?

5 A Yes.

6 Q When you saw what you saw, and about which you
7 testified?

8 A They were all three sitting near each other.

9 Q You do know that Mr. Lucy offered to pay him,
10 offered to pay him five dollars on the purchase price that
11 night, is that right?

12 A Yes; but Mr. Zehmer didn't take it, he left
13 it there.

14 Q Did he tell him at that time, "You have the
15 agreement and my word is as good as my bond?"

16 A No, he did not. He said he didn't want to
17 sell the place.

18 Q What did he say to Mr. Lucy about the agreement?

19 A Didn't say anything, just said, "I don't want
20 to sell the place, I am keeping it for my son."

21 Q Didn't mention about the agreement at all?

22 A No.

23 Q What did Mr. Lucy say then, if anything?

24 A I didn't hear anything he said.

25 Q You didn't hear Mr. Lucy say anything after he

1 picked up the agreement, is that right?

2 A No.

3 Q When did Mr. Zehmer start talking about it
4 was a joke?

5 A (Pause) Well, all along they were carrying
6 it as a joke.

7 Q When did Mr. Zehmer mention the word "joke"?

8 A All along.

9 Q Said it was a joke all along?

10 A Yes.

11 Q Used the word "joke" all along, is that right?

12 A Yes.

13 Q Are you sure of that?

14 A Yes.

15 Q That he was using the word "joke" all along.

16 Then what was all the conversation about, Mrs. Chappell?

17 A Just about "I will give so much for the farm",
18 and then would raise it a little more, and then Mr. Zehmer
19 would say, "Oh, you are just joking, you haven't got that
20 much", and he said, "I don't want to sell."

21 Q As I understand it, you say Mr. Lucy would
22 raise it. What was the first price that he offered to
23 give for the place, if he raised it several times?

24 A I don't know the exact figures and things.

25 Q You said he raised it, though. How much did he

Chappell - Cross

1 raise it?

2 A (Pause) First time I don't know what he said,
3 but Mr. Zehmer said, "You haven't got that much." He said,
4 "Well, I will give you \$50,000.00." Mr. Zehmer said, "I
5 know you haven't got that much."

6 Q But you testified that he raised it several
7 times. I want to know how much did he start out at?

8 A Well, I don't know.

9 Q You don't know about that. As a matter of fact,
10 isn't \$50,000.00 the only figure that was ever mentioned
11 down there that night?

12 A The only one that I heard.

13 Q As a matter of fact, wasn't it several days
14 after that thing took place before you heard anything
15 about a joke, and isn't that when you found out it was a
16 joke?

17 A No, I heard Hardy say that that night, after
18 that I didn't hear any more about it.

19 Q Until after Mr. Lucy left?

20 A No, I didn't hear any more about it after Lucy
21 left for months.

22 Q For how long?

23 A For a good many months, I didn't hear anything
24 more about it, because I left and went home on account of
25 my daddy being sick.

Chappell - Cross

1 Q You said Mr. Lucy staggered a little bit when
2 he left, but Mr. Zehmer was sober, is that right?

3 A They both had been drinking.

4 Q But tell me this, was Mr. Zehmer drunk?

5 A They were both pretty tight.

6 Q Was he drunk?

7 A I would say after they left Mr. Zehmer went
8 down in the lunchroom, he and Mrs. Zehmer.

9 Q Would you say he was drunk?

10 A (Pause) I don't guess you would call them
11 drunk exactly, but they were drinking.

12 Q They both had been drinking?

13 A Yes.

14
15 And further this deponent saith not.

16 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.

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3 S. E. WINN, JR., a witness introduced in
4 behalf of the respondents, first being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GOODE:

8 Q You are Mr. S. E. Winn, Jr.?

9 A Yes, sir.

10 Q What is your age, occupation and place of
11 residence?

12 A 39 years of age, I am in the sawmill business,
13 I live at Darvills, Virginia.

14 Q Is that in Dinwiddie County?

15 A Yes.

16 Q Were you born and raised in Dinwiddie County?

17 A Yes, sir.

18 Q Do you know Mr. A. Hardy Zehmer?

19 A Yes, sir.

20 Q Do you know the farm he owns known as the
21 Ferguson Farm on Route 40?

22 A Yes, sir.

23 Q Have you known this farm for some time?

24 A Yes, sir.

25 Q Have you ever undertaken to buy this farm or

Winn - Direct

1 the timber on the farm from Mr. Zehmer?

2 A Yes, sir, several times.

3 Q What was the latest time that you made an
4 effort to buy it?

5 A I wouldn't know the exact date, sir, but I
6 think it was in December sometime the latter part of
7 December last year.

8 Q Did Mr. Zehmer consent to sell it, or what
9 happened?

10 A No, sir. I saw him about buying some timber
11 on the Ferguson place, and then he said he had decided
12 not to sell it. He was going to leave it to his boy.

13 Q Was that the same reason he gave each time
14 you talked to him about buying the land, or timber?

15 A Well, I don't know about leaving it to his
16 boy, but he said he didn't want to sell it.

17 Q Each time you approached him he said he
18 didn't want to sell it?

19 A Yes, sir.

20 Q And he did tell you that he was saving it,
21 or was going to leave it to his boy?

22 A Yes, sir.

23 Q Do you know the name of his son?

24 A Ford Zehmer, yes, sir.

25 Q Do you know the last date in December of 1952

Winn - Direct

1 that the last conversation took place, sir?

2 A No, sir.

3 Q But you do know it was in December?

4 A Yes, sir.

5 Q Was it prior to December 20?

6 A Yes, sir.

7
8 CROSS EXAMINATION

9 BY MR. BAUGH:

10 Q Mr. Winn, you say Mr. Zehmer told you that
11 he had decided not to sell it. Had he offered before to
12 sell it to you?

13 A No, sir.

14 Q Had you offered before to purchase it?

15 A Yes, sir.

16 Q What happened on that occasion?

17 A He said he would think it over. He didn't have
18 any idea that he would sell it, though, he said.

19 Q When did you make that offer?

20 A I couldn't tell you the date, sir, but I
21 imagine sometime in the summertime.

22 Q Did you offer him any definite price for it?

23 A No, sir.

24 Q Any price discussed?

25 A No, sir.

Winn - Cross

1 Q How many times have you discussed the purchase
2 of timber with Mr. Zehmer on this farm?

3 A Two or three times, I don't remember exactly
4 about that.

5 Q If he told you that he had decided not to sell
6 it, why would you go back and see him again?

7 A He might change his mind, I didn't know.

8 Q You have known him all your life, have you not?

9 A Yes, sir.

10 Q Is that his reputation, that he changes his
11 mind on business deals?

12 A I wouldn't say that, sir. You know, I am
13 trying to buy timber from everybody that I can. A lot
14 of times a man might not want to sell it today and he
15 might want to sell it tomorrow.

16 Q At any rate you didn't give up, you kept
17 trying to buy it?

18 A That is right.

19 Q Are you still interested, would you like to
20 buy it now if you could?

21 A I would like to buy it, yes, sir.

22 Q I see.

23 A But I am like a lot of other people, I don't
24 have any money, but if I could arrange for the money I
25 would like to buy it.

Winn - Cross

1 Q Did you ever make Mr. Zehmer a definite offer
2 of so many dollars for this timber?

3 A No, sir.

4
5 And further this deponent saith not.

6 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.
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13 JOHN WILL RIVES, a witness introduced in
14 behalf of the respondents, first being duly sworn, testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. GOODE:

18 Q You are Mr. John Will Rives?

19 A Yes, sir.

20 Q State your age and your occupation, please sir.

21 A I am 57 years of age, Game Warden, live in
22 McKenny.

23 Q How long have you known Mr. A. Hardy Zehmer?

24 A All my life.

25 Q How long have you known the Ferguson Farm on

Rives - Direct

1 Route 40?

2 A Have known that a long time, too.

3 Q Did you have any conversation with Mr. Hardy
4 Zehmer during last year with reference to the saw timber
5 on this farm?

6 A Yes. I talked to him last year, in fact we
7 had a number of conversations about it. I don't remember
8 just exactly when the last one was, but I would say
9 approximately late summer or early fall, and the last
10 conversation was in regard to selling, and he told me at
11 that time that he had decided not to sell it at any price,
12 that he was going to leave the property to his son, Ford,
13 or Sneezer, as he is known, in trust in some way.

14
15 CROSS EXAMINATION

16 BY MR. HARRISON:

17 Q Did you ever make an offer for the property?

18 A At various times, Mr. Harrison, I think I did.
19 To go back a little, I sold the property to Mr. Zehmer
20 from the Ferguson Farm. We have had numbers and numbers
21 of conversations about it. I cannot remember or recall
22 just when they were.

23 Q How much did you offer him for it?

24 A I wouldn't remember any definite figure, because
25 things advance some from time to time, and they did from

Rives - Cross

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the time he bought it, kept going up. I don't know that we ever, either one of us, ever put any definite figure on it; because he never did agree to sell it to me.

Q As far as you can recall, then, you never offered him a definite amount in cash for the property?

A I wouldn't say positively that I did. I might have told him I will give you so and so.

Q But if you did you do not recall that?

A No, sir.

And further this deponent saith not.

SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.

MR. GOODE: That is all. We are going to close.

MR. HARRISON: We rest.

End

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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 Ethel J. Chappell, S. E. Winn, Jr., and John Will Rives were duly taken and sworn to before me at the time, place, and for the purpose set out in the caption hereto, said depositions taken by agreement of counsel; I further certify that the signatures of the witnesses to their depositions were waived by agreement of counsel, and that there were no original exhibits filed with me during the taking of the above depositions on this the 9th day of September, 1953.

Given under my hand this *15* day of September, 1953.

H. James Edwards
NOTARY PUBLIC FOR THE STATE OF VIRGINIA AT LARGE

My commission expires October 5, 1956.