

Chancery # 131

Record No. 4272

In the
Supreme Court of Appeals of Virginia
at Richmond

W. O. LUCY AND J. C. LUCY

v.

A. H. ZEHMER AND IDA S. ZEHMER

Filed
APR 2 1954

J. H. Matthews
clerk FROM THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

NOTICE TO COUNSEL

This case probably will be called at the session of court to be held.

JUN 1954

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

H. G. Turner, Clerk.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4272

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 27th day of January, 1954.

W. O. LUCY AND J. C. LUCY, Appellants,

against

A. H. ZEHMER AND IDA S. ZEHMER, Appellees.

From the Circuit Court of Dinwiddie County.

Upon the petition of W. O. Lucy and J. C. Lucy an appeal and *supersedeas* is awarded them from a decree entered by the Circuit Court of Dinwiddie County on the 21st day of October, 1953, in a certain chancery cause then therein depending wherein the said petitioners were plaintiffs and A. H. Zehmer and Ida S. Zehmer were defendants; upon the petitioners or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of five hundred dollars, with condition as the law directs.

RECORD

* * * * *

BILL OF COMPLAINT.

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

Your Complainants respectfully represent:

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

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

2. That the said tract of land is commonly known, designated and identified, throughout Dinwiddie County, as “The Ferguson Farm”, and was being operated by the said A. H. Zehmer on the 20th day of December, 1952.

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

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

page 2 } "We hereby agree to sell to W. O. Lucy the Ferguson Farm complete for \$50,000.00, title satisfactory to buyer.

A. H. ZEHMER
IDA S. ZEHMER."

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

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

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

8. That complainant, J. C. Lucy, of Lawrenceville, Virginia, is interested in said property and this suit by reason of the fact that on December 22, 1952, W. O. Lucy advised the said J. C. Lucy of his purchase of the Ferguson Farm complete for \$50,000.00, and said parties agreed that they would own the property jointly, and that title thereto would either be taken in their joint names, or that after deed was executed by the respondents to W. O. Lucy, the latter and his wife would transfer an undivided 1/2 interest in the property to the said J. C. Lucy, it being further understood that the said J. C. Lucy would pay \$25,000.00 of the agreed purchase price of \$50,000.00, and pay 1/2 of the costs incident to the title examination and recordation of the necessary instrument of sale.

9. That W. O. Lucy, and W. O. Lucy and J. C. Lucy, jointly and severally, have always been willing and ready to comply with the terms of the said agreement, made with the respondents, and following the title examination, as afore-
page 3 } said, they applied to the respondents and offered to pay the agreed purchase price upon the delivery of

Supreme Court of Appeals of Virginia

a sufficient deed to them for the said property, yet the said respondents refused, and still refuse, to comply with the said agreement on their part.

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

Therefore, complainants pray:

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

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

Respectfully submitted.

W. O. LUCY
Dinwiddie, Virginia
J. C. LUCY
Lawrenceville, Virginia
Complainants by Counsel.

EMERSON D. BAUGH
A. S. HARRISON, JR.
Attorneys for Complainants
Lawrenceville, Virginia.

Filed in the Clerk's Office the 6th day of March, 1953.

Teste:

JOYCE A. WELLS, D. C.

* * * * *

page 6 }

* * * * *

ANSWER.

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

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

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

3. This respondent admits that on the 20th day of December, 1952 W. O. Lucy offered this respondent the sum of \$50,000.00 cash for what he called the Ferguson Farm, but this respondent considered the offer as made in jest and did not regard it as a serious offer.

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

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

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

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

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

9. Concerning the allegations of Paragraphs 9 and 10 of the said bill of complaint, this respondent has no knowledge.

10. This respondent hereby expressly denies all allegations of said bill of complaint not herein expressly admitted to be true. This respondent expressly denies that he ever entered into any agreement with W. O. Lucy to sell to him the real estate and personal property described in the bill page 8 } of complaint, and expressly denies that the memorandum in writing in the possession of the said W. O. Lucy was any memorandum of a contract made between the plaintiff and this respondent, and avers that the said memorandum was neither signed, executed or delivered to the said W. O. Lucy as a memorandum of any agreement between the parties.

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

A. H. ZEHMER
By Counsel.

MORTON G. GOODE
WM. EARLE WHITE
Attorneys for Defendants.

* * * * *

Filed Mar. 31, 1953.

H. B. BATTE, Clk.

page 9 }

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ANSWER.

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

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

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

2. The real estate described in Paragraph 1 of the bill of complaint was being operated by A. H. Zehmer on the 20th day of December, 1952, but whether said tract of land is commonly known, designated and identified throughout Dinwiddie County as "The Ferguson Farm" this respondent neither affirms nor denies, but calls for strict proof of such allegation.

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

4. It is true that this respondent signed a memorandum prepared by the said A. H. Zehmer, copy of which is filed with the bill of complaint as a part of Paragraph 4 thereof, page 10 } but it is not true that this is a memorandum of any agreement between the said A. H. Zehmer and his respondent on the one hand and W. O. Lucy on the other, but on the contrary, said writing was prepared as a joke in connection with the discussion between the said A. H. Zehmer and W. O. Lucy which your respondent did not regard as any serious effort on the part of either to make a contract, and this respondent affixed her name to the same to carry along what she regarded as a joke and with no intention of making any contract with the said W. O. Lucy. This respondent denies that the said memorandum was signed, executed and delivered

to the said W. O. Lucy as any memorandum of agreement between the parties. This respondent further states that the said W. O. Lucy picked up the memorandum and when he offered the said A. H. Zehmer the sum of \$5.00 to bind the bargain as he stated, the said A. H. Zehmer immediately refused to accept the \$5.00 and told the said Lucy that the whole matter was a joke, that he had no intention of selling the farm, and this respondent understood that it had been made clear to the said Lucy that no contract had been entered into at any time between the parties.

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

6. This respondent expressly denies all allegations of the bill of complaint not herein admitted to be true. This respondent for further answer to the said bill of complaint expressly denies that she at any time ever agreed to sell any property to W. O. Lucy for any price whatsoever. This respondent further says that the said W. O. Lucy never made any offer to this respondent of any nature whatsoever regarding said property, and further avers that neither the said W. O. Lucy nor A. H. Zehmer were in any condition to make a contract on the evening of December 20, 1952 when this writing was prepared by the said A. H. Zehmer.

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

IDA S. ZEHMER
By Counsel.

MORTON G. GOODE
WM. EARLE WHITE
Attorneys for Defendants.

page 11 }

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Filed Mar. 31, 1953.

H. B. BATTE, Clk.

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page 21 }

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DECREE.

This cause came on this day to be heard upon the bill of complaint and the exhibits filed therewith, upon the separate answers of the defendants, A. H. Zehmer and Ida S. Zehmer, duly filed herein, upon the depositions of witnesses duly taken to be read as evidence on behalf of the complainant and of the defendant, and was argued by counsel.

Upon consideration whereof, the court being of opinion that the complainants have failed to establish their right to specific performance of the alleged contract between the complainants and the defendants, the court doth ADJUDGE, ORDER and DECREE that the complainants' bill be and the same is hereby dismissed.

And the complainants, by counsel, duly excepted to the action of the court.

* * * * *

Enter this:

J. G. JEFFERSON, JR., Judge.

Date Oct. 21, 1953.

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page 23 }

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The complainants, W. O. Lucy and J. C. Lucy, appeal from the decree and final judgment entered herein on October 21, 1953, whereby the Honorable Judge of the Circuit Court of Dinwiddie County, Virginia, dismissed the bill of complaint of the complainants, and refused to grant the complainants the relief therein prayed.

Complainants assign as error the action of the Court in decreeing that complainants failed to establish their right to specific performance of the alleged contract, set forth in the bill of complaint, between the complainants and the defendants, and, therefore, say that the decree and judgment of the

Court in dismissing the bill of complaint is contrary to the law and evidence and is erroneous.

Respectfully submitted,

W. O. LUCY
 J. C. LUCY
 By A. S. HARRISON, JR.
 EMERSON D. BAUGH
 Attorneys.

* * * * *

Filed Nov. 4, 1953.

H. B. BATTE, Clk.

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page 16 }

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

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

Mr. Morton G. Goode and Mr. Wm. Earle White, counsel for the respondents.

page 17 } **STIPULATION:** It is stipulated by counsel for all parties that any objections that they may have to the testimony, questions or answers, can be made upon hearing of this case before the Court, and to the same extent and for the same purpose as if made at this hearing of the taking of the testimony. Further that all signatures might be waived.

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

page 18 } WALTER HUSKEY,
a witness introduced in behalf of the complainants,
first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baugh:

Q. Mr. Huskey, where do you live?

A. McKemey, Virginia.

Q. What is your age?

A. 36.

Q. What is your occupation?

A. Service station operator.

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

A. I do.

Q. How long have you known him?

A. I would say 10 or 15 years.

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

A. Yes, sir.

Q. Where did you see him?

A. At my station, he bought gasoline there.

Q. Bought gasoline at your service station?

A. Yes, sir.

Q. Did you wait on him personally?

A. Yes, sir.

page 19 } Q. What time of night was this?

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

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

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

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

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

CROSS EXAMINATION.

By Mr. Goode:

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

A. No, sir.

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

Paul McClelland.

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

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

A. No, sir.

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

page 20 } A. I couldn't say.

And further this deponent saith not.

Signature waived by agreement of counsel.

PAUL McCLELLAND,

a witness introduced in behalf of the complainants, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baugh:

Q. Mr. McClelland, where do you live?

A. I live at McKenney.

Q. What is your occupation?

A. Mechanic.

Q. What is your age?

A. 26.

Q. Where were you working as a mechanic on December 20, 1952?

A. Mr. A. H. Zehmer.

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

A. Yes, sir.

Q. Did you see Mr. W. O. Lucy on the night of
page 21 } December 20?

A. Yes, sir.

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

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

Q. Were you at work at the time?

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

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

A. I would say about 200 feet.

Q. All there on the same lot?

A. All on the same lot.

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

Paul McClelland.

A. Yes, sir.

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

A. Yes, sir.

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

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

Q. You didn't hear any conversation with reference to any deal on the Ferguson place?

A. No, sir.

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

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

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

A. Yes.

Q. What was Mr. Lucy's condition at the time you saw him with reference to intoxication?

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

Q. Where did you first see Mr. Lucy?

A. At the lunchroom.

Q. At the lunchroom?

A. Yes.

Q. Who was with you at the time?

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

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

A. No, just Mr. Zehmer.

Q. Where had you come from at that time?

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

Q. From the garage and service station?

A. Yes, sir.

page 23 } Q. Was Mr. Lucy in the lunchroom when you all walked in or did he come in later?

A. He was there when we came in.

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

A. Yes, there at the lunchroom.

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

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

Paul McClelland.

Q. Hadn't had but one drink?

A. One drink, to my knowing.

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

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

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

A. No, sir.

CROSS EXAMINATION.

By Mr. Goode:

Q. You had been working at the service station there I believe?

page 24 } A. At the garage.

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

A. Yes.

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

A. Supposed to be, yes, sir.

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

A. Yes, sir.

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

A. Yes, sir, I would.

Q. You would?

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

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

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

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

A. No.

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

A. Yes, sir.

page 25 } Q. But Mr. Lucy was there?

A. Yes, sir.

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

Paul McClelland.

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

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

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

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

A. That is right.

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

A. None that I seen, no, sir.

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

A. No, sir.

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

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

Q. It was a Saturday night before Christmas?

A. I believe it was.

page 26 } Q. You were closing up?

A. Yes, sir.

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

A. Yes, sir.

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

A. He gave me the drink.

Q. Did he have a bottle?

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

Q. What kind of bottle was it?

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

Q. It was in a paper cup?

A. Yes, sir.

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

A. No, sir.

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

A. No, sir, I do not.

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

Rennie W. Bridgman.

page 27 } A. No, sir.
 Q. You didn't know about that?
 A. No, sir.

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

A. That is right.

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

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

Q. Did you see Mr. Lucey and Mr. Zehmer both there in the restaurant?

A. Yes, sir.

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

A. No, sir.

And further this deponent saith not.

Signature waived by agreement of counsel.

page 28 } RENNIE W. BRIDGMAN,
 a witness introduced in behalf of the complainants,
 first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baugh:

Q. Where do you live, Mr. Bridgman?

A. Seven miles from McKenney, west of McKenney.

Q. You mean in Dinwiddie County?

A. Yes, sir.

Q. What is your age?

A. 43.

Q. What is your occupation?

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

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

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

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

A. Well, I would say yes.

Rennie W. Bridgman.

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

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

page 29 } Q. Do you know how long he has owned it?

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

Q. If you met a person on the highway at Dinwiddie Court-house who made inquiry about the Ferguson Farm, where in Dinwiddie County would you have directed him, where would you have directed him to go?

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

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

A. Yes, sir.

CROSS EXAMINATION.

By Mr. White:

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

A. Born and raised there.

Q. People in other sections of the county as far as you know wouldn't be referring to this as the Ferguson Place, this isn't the only Ferguson Place in Dinwiddie County, page 30 } is it?

A. Well, I believe it is.

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

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

Q. Do you know Mr. Jack Ferguson?

A. Yes, sir,—no, I take that back, I don't know him.

Q. You knew there was such a person?

A. I knew it was such a person.

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

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

Q. Do you call this the Ferguson Farm?

A. No, sir, not now.

Mrs. A. H. Zehmer.

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

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

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

A. No, sir.

Q. You have no way of knowing whether people around Wilson would refer to this as the Ferguson Farm, page 31 } do you?

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

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

A. I would think so, I did.

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

A. Yes, sir.

Q. But that is purely a local proposition?

A. As far as I know.

And further this deponent saith not.

Signature waived by agreement of counsel.

MRS. A. H. ZEHMER,

called as an adverse witness by Mr. Harrison, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Harrison:

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

A. Ida P. Zehmer, McKenney, Virginia.

Q. You are one of the respondents to this suit? page 32 }

A. Yes.

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

A. Yes, sir.

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

A. Yes.

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

A. Yes.

Q. At McKenney?

Mrs. A. H. Zehmer.

A. Yes.

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

A. I was.

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

A. Yes, sir.

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

A. Well, I heard very little about that when he first came in. I heard Mr. Lucy ask Mr. Zehmer if he had sold the Ferguson Place. I was sitting in there reading, and when Mr. Lucy came in, and I know him when I see him, and I didn't have very much to say. He looked as though he had had something to drink. He asked where Mr. Zehmer
page 33 } was.

Q. He was looking for Mr. Zehmer?

A. Yes.

Q. You did hear him ask—

Mr. Goode: We would like to very sincerely request that she be allowed to finish her answer.

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

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

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

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

Mr. Lucy said, "I bet you wouldn't take \$50,000.00 cash for that farm." Mr. Zehmer says, "You haven't got
page 34 } \$50,000.00 cash."

Mr. Lucy said, "I can get it." Mr. Zehmer said,

Mrs. A. H. Zehmer.

“Well, you probably could form a company and get that, but you haven’t got \$50,000.00 cash to pay me tonight.”

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

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

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

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

A. Yes.

Q. Had not sold it?

A. Yes.

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

A. Yes, sir.

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

A. Yes.

page 35 } Q. And if it were still owned by him and available. Is that right?

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

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

A. Cash, yes, sir.

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

A. Yes, sir.

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

A. I didn’t hear him say that, I heard Mr. Lucy say that, “Will you write it out?”

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

A. Yes.

Q. For the Ferguson Farm?

A. Yes, sir.

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

A. Yes.

Mrs. A. H. Zehmer.

Mr. Goode: I know that Mr. Harrison does not intend to lead the witness, but I would like to have him ask questions without leading the witness.

Q. And you of course knew that \$50,000.00 cash page 36 } meant \$50,000.00 in cash, or its equivalent, to be paid by Mr. Lucy to Mr. Zehmer for the property?

A. That night.

Q. Pardon?

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

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

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

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

A. Oh, yes.

Q. You think he was there approximately an hour?

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

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

A. I should think so, yes.

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

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

Q. You know who changed it?

A. No, I don't.

Q. Do you mean it has been changed since you page 37 } all signed it?

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

Q. But it was written "I" first?

A. Yes, sir, yes indeed.

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

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

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

A. Yes, sir.

Q. You could not be mistaken about that?

A. No.

Q. Let me refresh your memory, because this is simply an inquiry trying to get at what the facts are. Didn't Mr. Zehmer write it out first "I agree to sell the Ferguson Farm" and so

Mrs. A. H. Zehmer.

forth, and then when Mr. Lucy protested and stated that you would both have to sign, he tore that up, or discarded it, and wrote it out as "we"?

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

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

A. I am.

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

A. Well, I see no reason why Mr. Zehmer should change it. Didn't see him do it.

page 38 } Q. In any event you did sign along with Mr. Zehmer?

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

Q. That was in an undertone?

A. Yes.

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

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

By Mr. White:

Q. Distance to where?

A. To where Mr. Lucy is standing.

Mr. Baugh: We might estimate that about 10 feet.

Mr. Harrison: Approximately 10 feet.

By Mr. Harrison: (Continued)

Q. Were you behind the counter at the time?

A. Yes, sir.

Q. Where was Mr. Lucy sitting?

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

Q. He was approximately 10 feet away?

A. Yes, sir, fully that.

page 39 } Q. And this remark that you say was made to you "it is just a joke" was made in an undertone?

A. Yes.

Q. So Mr. Lucy would not hear it?

A. Yes, sir.

Q. And Mr. Lucy did not hear it?

A. I don't think he did.

Mrs. A. H. Zehmer.

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

A. Ask me that question again.

Q. I said, any intention that Mr. Zehmer might have had not to sell the property, and which he communicated to you in an undertone, was no heard by Mr. Lucy?

A. It wasn't intended to be.

Q. What say?

A. It wasn't intended to be.

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

A. Yes.

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

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

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

page 40 } Mr. White: Do you mind showing the memorandum to the witness?

Note: At this point the memorandum in question is shown to the witness.

Mr. White: Is that the original paper?

Mr. Harrison: As far as I know, yes.

(Referring to the paper the witness is now examining)

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

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

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

A. Yes.

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

A. Entire farm.

Q. Did that include the equipment?

A. There is no equipment out there.

Q. Did that include such personal property as was there?

A. I should think so.

page 41 } Q. Wasn't there some discussion about several head of cattle there?

A. No, not several. It was two.

Mrs. A. H. Zehmer.

Q. Was any discussion about the number of cattle?

A. Mr. Lucy said, "You have any cattle out there?" He said, "I have two calves, I think, two cows and two calves." He said, "Would you include those?" He said, "Oh, yes, I would include those."

Q. And how about the tobacco sticks?

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

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

A. Yes, he said you can have those.

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

A. I know of nothing else except the cows.

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

A. Not that I know of.

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

A. That is right.

Q. Approximately two head of cattle?

A. That is right.

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

page 42 } A. Yes, sir. .

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

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

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

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

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

A. No, I didn't.

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

A. That is right.

Mrs. A. H. Zehmer.

Q. When you wrote that part of it, read that part of it, I mean, before you signed your name, didn't you understand that if the title were good Mr. Lucy would agree to pay \$50,000.00, but if the title were bad that he would have page 43 } the right to reject the farm? Wasn't that your understanding?

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

Q. I mean, your understanding?

A. Yes, according to my understanding.

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

A. Yes.

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

A. Well, that is true.

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

A. Yes.

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

A. Yes.

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

A. It looks like it, yes.

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

A. This has been kept unusually good, it seems to me (looking at paper writing later marked and filed as page 44 } Exhibit 1). The piece of paper looks like it is very fresh.

Q. Is it the agreement that was signed by you and Mr. Zehmer?

A. That is my handwriting.

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

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

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

A. (Pause) Yes.

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

Mrs. A. H. Zehmer.

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

Q. And this was written on December 20?

A. On Saturday night, yes.

Q. 1952?

A. That is right.

Mr. Harrison: We at this time ask this be introduced in evidence marked as Exhibit 1.

Note: This paper writing, in size being three by four and one-half inches, seemingly a guest check slip, on page 45 } the stationery of Ye Old Virginnie Restaurant, Garage-Service Station, 25 miles south of Petersburg, McKenney, Virginia, bearing on the reverse side, the white side the following in pen and ink: "We hereby agree to sell to W. O. Lucy the Ferguson Farm complete for \$50,000.00. Title satisfactory to buyer. A. H. Zehmer. Ida P. Zehmer," is now marked and filed as Exhibit 1.

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

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

Q. Was anybody else present?

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

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

A. Yes, sir.

page 46 } Q. That is Mr. J. P. Batte, Clerk of the Court?
A. No.

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

A. Yes.

Q. Did you attend this house warming?

A. I did.

Q. Was Mr. Lucy there?

A. Yes.

Q. Do you recall whether you made any remarks at that

Mrs. A. H. Zehmer.

time to Mr. Lucy or in his presence regarding the sale of the Ferguson Farm which had occurred the prior night?

A. Yes, I do.

Q. What statement did you make, if any?

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

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

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

page 47 } Q. So by the following day it was fairly well known in the McKenney neighborhood that the sale had occurred?

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

Q. In a small town news does travel fast?

A. That is right.

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

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

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

A. Not too much.

Q. But you heard something about it?

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

Q. Was that at the party?

A. No.

Q. That was not at the party?

A. No.

Q. But I am talking about at the party.

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

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

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

page 48 } Q. And they were the men that were talking about the sale?

A. Yes, and as I passed by I heard the \$50,000.00 mentioned.

Q. You heard \$50,000.00 mentioned?

A. Yes, heard \$50,000.00 being used, and I said would—I

Mrs. A. H. Zehmer.

said with the high-price of liquor that you people were drinking last night it should have been more, it was too cheap.

Q. It was too cheap?

A. Yes, sir.

Q. That was definitely said at the party?

A. Yes.

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

A. Yes, sir.

Q. That was several days after?

A. Yes, sir.

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

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

Q. At least a week later?

A. Yes, sir.

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

A. Yes, sir.

page 49 } CROSS EXAMINATION.

By Mr. White:

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

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

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

page 50 } Then he closed the door and said, rather I said,
"I would hate to be on the road tonight and meet
that man driving, you should have taken him

Mrs. A. H. Zehmer.

home." He said, "Well, I am just about as bad off as he is." Evidently Zehmer had had something to drink before he came over there. That is what happened.

Q. What happened to the five dollars?

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

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

A. No, sir, not one thing.

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

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

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

A. Oh, No.

page 51 } Q. In other words, you didn't think anything—
A. Nothing whatsoever, after he told me it was a joke.

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

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

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

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

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

A. That was the only one.

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

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

A. None whatsoever.

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

Mrs. A. H. Zehmer.

A. Never.

page 52 } Q. Did he ever address any remarks to you with respect to purchasing the farm?

A. No, sir.

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

A. Yes.

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

A. Yes.

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

A. No.

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

A. Yes, fully that.

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

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

Q. You mean Mr. Zehmer?

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

Q. What about Mr. Lucy's condition?

page 53 } A. Mr. Lucy was drinking quite a lot, as I just told you, when he left. From the condition that he was in I suggested to Mr. Zehmer if he didn't think he should drive him home.

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

A. Yes, sir, I was.

Q. You said you stayed there about an hour?

A. Fully that.

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

A. Yes, very loud.

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

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

Q. What was the argument mostly about?

A. About Lucy not having the cash.

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

A. That is correct.

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

A. Yes, sir.

Mrs. A. H. Zehmer.

page 54 } Q. But that he didn't have it?
A. But "you don't have it tonight".
Q. That was really the center of the laughing and talking that was discussed?

A. Yes, that is all that was discussed.

Q. When Mr. Zehmer refused to take the five dollars, what was Mr. Lucy's attitude? What did he do? When Mr. Zehmer said that he wouldn't take the five dollars, what did Mr. Lucy do?

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

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

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

page 55 } Q. Did Mr. Zehmer ever say after he refused the five dollars, did he even tell Mr. Lucy that he would sell him the farm?

A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Harrison:

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

A. That is correct.

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

A. That is correct.

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

Mrs. A. H. Zehmer.

A. Oh, no, definitely.

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

A. No, indeed.

Q. That wasn't said?

A. No, indeed.

Q. But you do recall you suggested to your husband, Mr. Zehmer, that he drive Mr. Lucy home?

A. Yes.

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

A. I did.

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

A. Yes, sir.

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

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

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

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

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

A. That is right.

Q. So you thought your husband at that time was in full possession of his faculties and able to drive a car, look after Mr. Lucy and take him home, because you thought Mr. Lucy had been drinking too much?

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

RE-CROSS EXAMINATION.

By Mr. White:

Q. But Mr. Zehmer thought so?

A. Yes, he evidently did.

Q. What did he say?

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

And further this deponent saith not.

Signature waived by agreement of counsel.

page 58 } A. H. ZEHMER,
called as an adverse witness by Mr. Harrison, first
being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Harrison:

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

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

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

A. Yes, sir.

Q. How long have you owned the Ferguson Farm?

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

Q. Has it been longer than ten years?

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

Q. From whom did you buy it?

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

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

page 59 } A. I believe it is 47 1/2 or 72 and a fraction. I couldn't even swear to that, because I don't remember exactly.

Q. How far is the Ferguson Farm from McKenney?

A. About six and a half or seven miles.

Q. How do you go to it?

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

Q. Route 40 goes right through the farm?

A. Yes, sir.

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

A. I don't remember.

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

A. Yes, I know, I didn't know that I would have to come in here to this hearing and—

Mr. White: I object to the question on the ground that it is irrelevant.

Mr. Harrison: We are entitled to have it in the record. If it is immaterial the Court will strike it out.

A. H. Zehmer.

Mr. White: In the absence of proof of when he bought it, you expect to prove that, I assume?

Mr. Harrison: Yes, sir.

Q. You may answer the question.

A. I gave \$11,000.00 for it, I am sure, what year
page 60 } I just don't remember.

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

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

Q. Do you know what your annual taxes are?

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

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

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

Q. How many time had he offered to buy the place? How much did he offer to pay you for it?

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

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

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

Q. I am asking you specifically about Mr. Lucy.
page 61 } Had he offered any amount of money for it before,
had he ever evidenced any interest in buying the property from you before December 20, 1952?

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

Q. How many times?

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

Q. He never made you the offer and—

A. He never made me an offer, one time he did make me, I might say an offer. He offered me, asked me one time would I swap the Ferguson Farm for his home place where he now

A. H. Zehmer.

lives, and I gave him the same reply as I gave him every other time, that no I didn't want to trade, I didn't want to sell.

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

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

It was a little late closing up that night, on ac-
page 62 } count of the fact that Mr. McClelland, who has al-
ready testified here, was working for me at the
time, he had a garage job there that took him beyond the usual
closing time which was six o'clock.

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

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

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

Well, I go around, as is my usual habit, and cut the lights out around on the cabins, on the cabin grounds, lights on the service station were already out, and lights in front of the restaurant were already out, my wife was over there waiting for
me to come over, we were going to walk down
page 63 } through the woods and go home.

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

So we spoke, as we always do, we have always been pretty friendly. I called him W. O., he calls *he* Hardy. I walked around behind the counter there and talked a little while, I could see that he was pretty high, and I said, "Boy, you got some good liquor, drinking, ain't you?" He said, "Yes."

A. H. Zehmer.

Reached in his pocket and pulled out this pint bottle, said have a drink."

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

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

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

page 64 } Of course we argued that there pro and con for a long time on whether he had \$50,000.00 or not, you know how two drunks will do. We never discussed the *meets* and bounds, the boundaries or whatnot, what I had on it or anything else. The main argument was, the gist of the whole thing was whether he had \$50,000.00 in cash that he could put up right then and buy that farm. That was the main talk.

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

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

Note: At this point the witness is handed the paper writing formerly put in evidence as Exhibit 1.

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

So he said you get a piece of paper and sign it, and I will prove it to you, or something, words to that effect, page 65 } he said I will prove it to you that I have got \$50,000.00.

I reached in and scribbled this thing off. He said get your wife to sign it. I walked over there where she was, and just like she said I did, just like we were talking, and I told her I

A. H. Zehmer.

was just needling him, and didn't mean a thing in the world, that I was not selling the farm. First she refused to sign it, then she signed it.

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

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

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

That is as near as I can recall it.

I told him no, no it wasn't a sale, just liquor do-
page 66 } ing the talking, just a bluff, we were just needling
each other.

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

He slammed the door and walked out.

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

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

A. H. Zehmer.

page 67 } I said, "I didn't take the money, don't consider it a deal."

I further said, "I am not trying to say this because I think the price is too cheap, if I wanted to sell, I think \$50,000.00 would be a good price, and I think you would get stuck."

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

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

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

So I still wasn't concerned about the thing. Two page 68 } or three weeks after that I got a letter from him saying that he was ready for the deed, had his cash and he was ready for the deal. Then I found out he really was in earnest.

Q. Is that all?

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

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

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

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

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

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

A. H. Zehmer.

A. The gist of it, the main outline. I went over the facts, I didn't give them all on that piece of paper. I page 69 } know I didn't give him that piece of paper, as I told you before, it was lying between my elbows. I was resting like this (indicating) and I reached over and got the drink that I had already poured out and was drinking that, and as I did that he said, "Let me see it." And he picked it up, he did, and by the time I finished the drink he had the thing in his pocket, and had five dollar bill laying there on the table, and said, "Hardy, here is five dollar payment on it." That is when I said, "Boy, this is just a bluff, liquor is doing the talking."

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

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

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

A. What particular statement do you mean?

Q. What you have testified here today?

A. Mention one of them.

Q. All of them. Everything you have said here page 70 } is the truth?

A. Yes, sir.

Q. Then you do remember it?

A. I remember what I have said, yes.

Q. So you were not too intoxicated and had not been drinking so much that you do not have a very vivid recollection of the conversation and the conference that you had with Mr. Lucy on the night of December 20?

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

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

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

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

A. H. Zehmer.

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

page 71 } Q. Then if he was supposed to pay cash for it that night, Mr. Zehmer, why did you insert in your memorandum of sale "title satisfactory to buyer"?

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

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

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

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

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

Q. Who wrote this agreement?

A. I did.

Q. Whose handwriting and whose language is it?

A. Mine.

Q. Did Mr. Lucy dictate it?

A. No, sir.

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

A. The whole thing was just as I told you before, needling him, bluffing, just a bluffing game both of us were pulling off, is the way I considered it, and I still do.

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

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

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

A. I have already said that.

Q. Then it is true?

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

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

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

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

A. H. Zehmer.

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

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

A. It means everything on it.

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

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

Q. Was there anything else there except a couple
page 73 } of cows?

A. No, sir.

Q. What say?

A. No, sir.

Q. Any tobacco sticks there?

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

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

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

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

A. That is right.

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

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

Q. As a business you contemplated that he would of course have the title examined?

A. Well, in an ordinary deal when you have time to sit down
and think about a deal you consider all those things,
page 74 } but that that we were doing that night, was just a
bunch of two doggoned drunks bluffing to see who
could talk the biggest and say the most. The whole thing was
cokeyed. The whole thing was just two drunks up there
bluffing and talking, that is the way it was.

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

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

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

A. No, sir.

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

A. H. Zehmer.

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

Q. Did you tell him then that he had the agree-
page 75 } ment? Did you tell Mr. Luey that, when you re-
fused his five dollars, you didn't need it because he
had the agreement, the written agreement?

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

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

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

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

A. I don't know.

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

A. I don't remember.

Q. You don't remember about that?

A. No, sir.

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

A. No, sir. I don't think I wrote but one out (again looking
at Exhibit 1). I don't think I wrote but one out.
page 76 } Mr. Luey never saw it until he reached over there
and said to let him see it. It was lying on the table
just like that. I was leaning over myself to see if I could get
heads and tails of the thing myself, and he asked me to let him
see it.

Q. So that agreement was written out of the presence of Mr. Luey?

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

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

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

A. H. Zehmer.

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

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

Q. Sir?

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

Q. You did write it and sign it yourself before you took it over to Mrs. Zehmer?

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

page 77 } Q. She was at a different place in the lunchroom or restaurant at the time she signed it?

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

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

A. That is correct.

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

A. That is right.

Q. He did not hear that?

A. No.

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

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

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

A. Across the counter from me, yes.

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

A. Yes.

Q. Is that correct?

A. Yes, that is correct.

page 78 } Q. The agreement then had been written by you and signed by both you and Mrs. Zehmer?

A. Yes.

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

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

Q. You mean—

A. Stretch.

A. H. Zehmer.

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

A. That is right.

Q. How wide is the counter?

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

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

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

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

A. That is correct.

page 79 } Q. You and Mr. Lucy prior to this time, and now so far as I know, are good friends and have been good friends?

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

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

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

Q. But you let him leave there that night?

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

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

A. Yes, I do.

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

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

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

A. I did not say that.

page 80 } Q. Exactly what were your words to him?

A. I said, "I am not trying to claim it wasn't a deal on account of the fact the price was too low," I said, "If I had wanted to sell \$50,000.00 would be a good price, in fact I

A. H. Zehmer.

think you would get stuck at \$50,000.00." That is the time he said, "It isn't the first time I have been stuck." And that ended the conversation.

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

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

Q. And Mr. Lucy's reply was—

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

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

A. When?

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

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

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

A. He said, what, sir?

Q. Did he say, "I have been stuck before, and I page 81 } am going through with it?"

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

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

A. Yes.

Q. Which indicated—

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

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

A. Yes.

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

A. Yes, I received that.

Q. Is this the letter that you received?

A. Yes.

Note: This letter is now marked and filed as *Exhibit 2*.

This letter is on the stationery of W. O. Lucy, Dinwiddie, Virginia, dated January 2, 1953, and reads as fol-
page 82 } lows:

A. H. Zehmer.

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

Q. You received that letter?

A. Yes, I gave it to my attorneys.

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

A. That is correct.

Note: This letter on the stationery of Ye' Olde Virginnie, Restaurant-Cabins-Repair Shop, McKenney, Virginia, dated January 10, 1953, reads as follows:

“Mr. W. O. Lucy, Dinwiddie, Virginia. Dear Mr. Lucy:
Replying to your letter of January 2, 1953.

page 83 } “As I know, and as I have repeatedly told you,
at the time and since, I did not intend to nor agree to sell my farm. When you brought the matter up at my place on Saturday night, December 20, we were both drinking and our discussion was in that spirit. We came to no agreement about anything.

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

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

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

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

A. H. Zehmer.

page 84 } Q. Please compare the two, Mr. Zehmer, and determine if that is so?

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

Mr. White: We have no objection to that.

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

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

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

A. I don't remember, sir.

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

A. I don't remember, sir.

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

page 85 } A. I don't know when the letter came from Mr. Lucy. I don't know when an answer was sent to him, but I know I didn't wait three weeks, I know that.

Q. Did you wait until January 18?

A. I don't remember the date.

Q. Or the 13th?

A. I don't remember the date.

Mr. Baugh: Counsel agree that the letter is postmarked the 13th instead of the 18th.

Note: Referring to the envelope, Exhibit 4.

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

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

A. H. Zehmer.

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

This letter reads as follows:

“Mr. A. H. Zehmer, McKenney, Virginia. Dear Mr. Zehmer: Please be advised that Mr. A. S. Harrison, Jr., and I have been retained to represent Mr. W. O. Lucy page 86 } and Mr. J. C. Lucy in consummating their purchase from you and Mrs. Zehmer of the “Ferguson Farm complete”.

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

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

page 87 } Q. So, Mr. Zehmer, within a matter of a few days after the conference of December 20 in your service station Mr. Lucy had the title to the Ferguson Farm examined and notified you that he was ready to pay the \$50,000.00 in accordance with the written memorandum?

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

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

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

Q. I believe that in your statement that you volunteered at the beginning of your deposition you stated that two or three

Albert Carr.

nights after this transaction occurred Mr. W. O. Lucy came to your service station and advised you that he was ready to close the transaction?

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

Q. What did he advise you?

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

Q. When was that?

page 88 } A. That was on Tuesday night following Saturday of this proposition, we all had this talk, when all this took place.

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

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

Mr. Harrison: That is all.

Mr. White: We reserve our cross examination on this.

And further this deponent saith not.

Signature waived by agreement of counsel.

page 89 } ALBERT CARR,
a witness called as a witness in behalf of the complainants, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baugh:

Q. Mr. Carr, what is your occupation?

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

Note: At this point following a short discussion Mr. Harrison states as follows:

Mr. Harrison: We agree that any objection anybody has to make can be made before the Judge with the same force and effect as if made here.

Q. Where?

A. In the Town of McKenney.

Albert Carr.

Q. In what capacity?

A. As a supervisor of a repeater station.

Q. How long have you been in McKenney?

A. 25 years next month, August 16.

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

A. Yes, sir.

Q. How long have you known him?

A. About that long.

page 90 } Q. Do you know Mr. W. O. Lucy?

A. I know him, sir.

Q. How long have you known him?

A. As much as ten or twelve years.

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

A. I did.

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

A. And others.

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

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

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

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

I left their company then and they had further
page 91 } conversation, they were together quite a while
after that, a matter of minutes, I don't know, but
that is all that I heard said between those two.

Q. Did you understand from that conversation—

Mr. Goode: Of course we object to his interpretation.

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

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

W. O. Lucy.

Q. What deal did he have reference to?

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

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

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

Q. Did Lucy make an reply to the statement that he was too tight?

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

CROSS EXAMINATION.

page 92 } By Mr. Goode:

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

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

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

A. I claim I did not.

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

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

And further this deponent saith not.

Signature waived by agreement of counsel.

page 93 } W. O. LUCY,
a complainant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baugh:

Q. Mr. Lucy, where do you live?

A. Dinwiddie, Virginia.

Q. What is your age?

A. 43.

Q. What is your occupation?

A. Lumber business, some farming.

W. O. Lucy.

Q. In the lumber business and farming?

A. Yes, sir.

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

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

Q. Have you—How far do you live from McKenney?

A. Eight miles.

Q. Are you familiar with the piece of property in the Dinwiddie County area referred to as the Ferguson Farm?

A. Yes, sir.

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

A. For the last 10 years.

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

page 94 } A. Yes, sir.

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

A. I did.

Q. Do you recall clearly and distinctly what occurred?

A. Yes, sir.

Q. Were you intoxicated that night?

A. Not to any extent, no, sir.

Q. Had you had a drink or two?

A. Yes, sir.

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

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

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

So he proceeds to do that, he tore the pad off of one of these little check books and wrote out, "I do hereby agree to sell to W. O. Lucy the Ferguson Farm for \$50,000.00 complete." I told him, "Before you finish writing it out," I said, "You better change that thing and put "we", because you will have to have Mrs. Zehmer to sign it too."

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

So Hardy said, "All right." He tore that one up and wrote this one right here for he and Mrs. Zehmer to sign, and he

W. O. Lucy.

asked Mrs. Zehmer would she sign, and she said, said she would for \$50,000.00, which she did. He wrote the one that we have here.

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

A. She was over behind the counter.

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

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

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

A. Yes, sir.

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

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

page 96 } Q. Did he tell you when you offered him the five dollars that he was joking with you, that there was no sale?

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

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

A. That is correct.

Q. What time of night was it?

A. I would say when I left there is was approximately nine o'clock.

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

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

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

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

Q. Did you make that suggestion?

A. Yes, sir.

Q. What was the reference in the agreement to farm com-

W. O. Lucy.

page 97 } plete, what does cover?
 A. He was the one that spoke up and suggested
 that. He said, "I will sell it to you complete,
 everything there." I said, "Don't you have a lot of cattle up
 there?" He said, "No, don't have but three heifers on the
 farm."

Q. Was any conversation had about any tobacco sticks?

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

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

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

Q. Did you ever make him an offer before?

A. I did.

Q. Did he accept it?

A. He did.

Q. What happened on that occasion?

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

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

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

page 98 } Q. He said—Is that the reason you requested the
 written agreement at this time?

A. That is correct.

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

A. None whatsoever.

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

A. Not that night.

Q. When did you first hear that?

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

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

A. He did.

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

A. Mrs. Zehmer walked by during the conversation, just
 walked up, several of us standing there, and she said, "You

W. O. Lucy.

paid too much, what is the matter, sold it to you too cheap?"
Something to that effect.

Q. Did you make any reply to that?

A. No, I didn't.

page 99 } Q. After this transaction on Saturday night, Mr.
Lucy, what did you proceed to do with reference to
getting the contract completed?

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

Q. Who is that?

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

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

A. He did.

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

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

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

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

page 100 } Q. I hand you a letter written on the stationery
of B. Hunter Barrow, dated December 31, 1952,
reporting on the title to this property. Is that the
letter?

A. Yes.

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

This letter, on the stationery of B. Hunter Barrow, Attor-
ney at Law, Dinwiddie, Virginia, dated December 31, 1952,
reads as follows:

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

Dear Mr. Lucy: In accordance with your request, I have
examined the title to that tract of land in Darvills District,
Dinwiddie County, Virginia, charged on the 1952 Land Books

W. O. Lucy.

as 471.6 acres, more or less, in the name of A. H. Zehmer from February 10, 1939 to date; this examination is made in accordance with and subject to the indexes to the various records found in use in said Clerk's Office and all references are to the records there.

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

page 101 } That by deed dated December 14, 1938, recorded February 10, 1939 in DB 62, Page 600, William Earle White, special commissioner, conveyed to J. H. Ferguson, with special warranty of title, all that certain tract or parcel of land, lying and being in Darvills Magisterial District, Dinwiddie County, Virginia, State of Virginia, containing 300 acres more or less, and adjoining the lands of Albert Hone, Walter Baskerville, Doyle and others; being the same tract of land on which A. G. Ferguson formerly resided and which was divided by the will of Mrs. M. L. Ferguson, dated October 24, 1911, and recorded in the Clerk's Office of the Circuit Court of Dinwiddie County, Virginia, in Will Book 10, Page 350, and described in said will as bounded on the north by W. G. Bridgman and Arthur Tucker, on the east by Albert Hone, Batte and Ligon, on the south by Lee Doyle, and J. H. Coleman, and on the west by E. H. Bishop, Arthur Tucker and T. W. Echols.

Memo: This deed was made by the special commissioner in the Chancery Suit styled *J. H. Ferguson v. Cralle Ferguson, et al.*

page 102 } That by deed dated November 20, 1943, recorded December 4, 1943 in DB 69, Page 167, J. H. Ferguson and wife conveyed to A. Hardy Zehmer, with general warranty and English covenant of title, the following described property:

All that certain tract or parcel of land, with the improvements thereon and appurtenances thereto belonging, lying in Darvills Magisterial District, Dinwiddie County, Virginia, on both sides of State Route No. 40, containing 471.6 acres, be the same more or less, and bounded on the north by the lands of Gunn Brothers and Bridgeman, on the east by lands now or formerly belonging to the Hone Estate, Deckers, Bowen, State Route No. 40, the old Criers Road and lands of Doyle on the south by the lands of Bowen, Doyle and Coleman, and on the west by the lands of Rogers, Gunn Brothers, the Bishop

W. O. Lucy.

Estate, Echols, the Bridgeman, the *meets* and bounds of said tract hereby conveyed being set forth on a certain plat of said property made by J. W. Pugh, Registered Engineer, dated August 7-9, 1941, which is recorded in the Clerk's Office of the Circuit Court of Dinwiddie County, Virginia, in plat book two, at Page 80-A; and being in all respects the same property conveyed to the said J. H. Ferguson by deed from page 103 } William Earle White, special commissioner, dated December 14, 1938 in which said tract is described as containing only 300 acres, more or less, and which said deed is recorded in the aforesaid Clerk's Office in deed book 62, at Page 600.

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

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

I do not find any liens or transfers binding or affecting the property during the period of this examination page 104 } and subject to the above noted comment, I am of the opinion that A. H. Zehmer can convey the same by proper deed.

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

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

A. That is right.

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

A. Yes, sir.

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

A. On the 14th of January.

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

W. O. Lucy.

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

Q. Do you recall on what date you received this letter?

A. On the 14th, I remember that.

Q. How do you happen to remember that?

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

Note: Exhibit 3 formerly introduced into the record is a letter, which apparently was mailed in the envelope 105 } velope, also marked in the record as Exhibit No. 4.

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

A. Yes, I saw him at that party.

Q. I mean after the party?

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

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

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

Q. Who was present at that time?

A. Mr. Barrow.

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

A. That is right.

Q. Were you with him at the time?

A. That is right.

Q. Were you prepared to pay the purchase price upon delivery of the deed at anytime after the title was examined?

A. Yes, sir.

Q. Are you prepared to do so now?

A. Yes, sir.

Q. Do you offer to do so now?

A. Yes, sir.

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

A. I think so.

W. O. Lucy.

Q. And approximately its value?

A. Yes, sir.

Q. As of that date?

A. Yes, sir.

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

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

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

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

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

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

page 107 } Q. You deny that you requested to see it and then picked it up off of the counter?

A. Absolutely.

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

A. He did.

Q. What is his occupation?

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

Q. You didn't name them all?

A. No, sir.

CROSS EXAMINATION.

By Mr. White:

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

A. How many drinks had I had?

Q. Yes.

A. Couple.

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

A. No, sir.

Q. Did you bring some whiskey there with you?

A. I had some in my pocket.

page 108 } Q. Full bottle or partly full?

A. Partly filled bottle.

Q. You customarily carry it around with you?

A. No, sir.

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

W. O. Lucy.

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

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

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

Q. You knew Hardy would take a drink?

A. Yes, sir.

Q. And you carried it in there for the purpose of giving him a drink if he wanted it?

A. If you wanted—if he wanted one, yes.

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

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

Q. How many drinks did Hardy take that night?

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

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

A. Not over that.

page 109 } Q. What did you go in there for, just to offer him a drink, or did you go in there with the intention of trying to buy the Ferguson Farm?

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

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

A. No, sir.

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

A. I don't remember.

Q. Weeks or months?

A. Months, I know.

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

A. I had driven up there that night earlier.

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

A. No, sir.

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

A. Had I come to see other people?

Q. Yes.

A. Yes, I saw several other people.

page 110 } Q. The purpose of your going to McKenney was to see some other people?

W. O. Lucy.

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

Q. This was an after thought, this thing about buying the Ferguson Farm, is that right?

A. What is that?

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

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

Q. You formed that intention after you got to McKenney?

A. That is right.

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

A. No, sir.

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

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

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

page 111 } A. Yes.

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

A. That is right.

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

A. That is right.

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

A. Yes, sir.

Q. How recently had you been over that farm?

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

Q. You had been looking it over?

A. Oh, yes.

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

A. No, sir.

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

W. O. Lucy.

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

Q. But you had gone over it as recently as three
page 112 } weeks before?

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

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

A. No.

Q. What did you do?

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

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

A. Just rode up there is all.

Q. You just rode up there?

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

Q. You are familiar with the place?

A. Yes.

Q. You did drive all around through it?

A. Where there were roads.

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

A. Yes, sir.

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

A. Yes, sir.

Q. You opened the negotiations for the Ferguson Farm
while you and Mr. Zehmer were having a drink to-
page 113 } gether, is that right?

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

Q. Before you had any drink at all?

A. Yes, sir.

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

A. Yes, I had a drink with him.

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

A. That is right.

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

W. O. Lucy.

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

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

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

Q. And you said you had some discussion about page 114 } he doubted if you had \$50,000.00. Can you recall what was said by both of you in respect to whether you did or did not have \$50,000.00?

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

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

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

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

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

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

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

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

A. No, sir.

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

A. I could have raised it without that.

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

A. Yes, sir.

Q. That is what you figured you were going to do, you were going to syndicate it, between you and your brother?

A. Yes, sir.

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

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

Q. Feeling happy?

A. Looks like I must have been feeling rich.

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

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

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

W. O. Lucy.

A. I knew I had had a drink.

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

A. No.

Q. You didn't feel them?

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

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

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

Q. What did Mr. Zehmer do, did he show you any of the effects of drinking liquor, could you tell by looking at him?

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

page 116 } Q. What about after you talked to him, and after you took some drinks with him?

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

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

A. Yes, sir.

Q. Not over a bottle of liquor?

A. Not over a bottle of liquor.

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

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

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

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

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

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

Q. I thought you were sitting opposite each other.

A. As I said a while ago, he wrote it out and I had it here.

page 117 } I could tell from the way he started off, "I do hereby agree—" sitting across the table from him,

I can tell what is on that paper upside down in front of me by sitting across the table.

Q. You can read it upside down?

A. He showed me what he had.

Q. Showed it to you?

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

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

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

W. O. Lucy.

- Q. At the time he wrote it?
A. After he had it signed.
Q. Did he have it signed at the time—
A. He didn't show it to me before he had it signed.
Q. But he showed you the other one before?
A. He signed the other one and nobody but his signature on it, just his signature.
Q. He finished it?
A. Sure.
Q. I thought you testified a while ago that he did not. So he wrote the whole thing out and exhibited it to you after he had signed it, and you wouldn't take it, is that your testimony now?
A. I told you that I told him they—told him he better change that and write it that we do hereby.
page 118 } Q. You are testifying now that Mr. Zehmer wrote a complete paper, signed it, and handed it to you, and that you told him he would have to change it and get it signed by his wife, and he destroyed a complete paper?
A. That is true.
Q. That is your testimony now?
A. Yes, sir.
Q. The second time he didn't show you the paper, is that right?
A. Until after he had it signed.
Q. Until after he signed it?
A. Didn't show me the first one until after he signed it.
Q. Then he went up and got his wife to sign. Did you hear any conversation between his wife and himself about the matter?
A. No, sir. She said in my presence she would sign it for \$50,000.00.
Q. She said she would sign it for \$50,000.00?
A. That is right.
Q. Was that the very first of the conversation that you and Mr. Zehmer were having?
A. That is when he was writing, I spoke up and asked him to write it for both of them so both of them could sign it.
page 119 } Q. After he had written the first one out?
A. After he wrote the first one out.
Q. Where had she been in the meantime while he was doing that?
A. She was behind the counter going back and forth.
Q. Working, you mean?

W. O. Lucy.

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

Q. They were moving around?

A. She was not standing right where we were standing. She was back over there.

Q. She was moving around?

A. Yes.

Q. When Mr. Zehmer brought you this paper you were sitting down at the counter?

A. That is right.

Q. And he was on the other side of the counter?

A. Yes.

Q. You said that he handed it to you and you took it in your hand?

A. Folded it up and put it in my pocket.

Q. When you put it in your pocket, sir, did you read it first?

A. Sure, I did.

Q. When he handed it to you did he say any-
page 120 } thing to you?

A. In regard to that?

Q. Yes, when he handed you the paper, did he make any remark at all?

A. No, sir.

Q. He just came back?

A. That is when I offered him five dollars.

Q. You offered him five dollars?

A. Asking him to give me a receipt for it, he said, "You don't need a—" I mean he said, "I don't need any money. You got the signed agreement there.

Q. He told you that you didn't need to give him the five dollars, and you put the money back in your pocket?

A. Absolutely.

Q. And you left. Wasn't anything further said?

A. No, sir.

Q. The next time that you saw Mr. Zehmer was I believe you testified at the party of Mr. Batte's house?

A. Yes.

Q. Sunday afternoon, is that right?

A. That is right.

Q. In the afternoon?

A. Yes, about six o'clock, I think it was.

Q. At that time you had this conversation with Mr. Zehmer,
and he told you that he would let you out because
page 121 } you were too tight and didn't want you stuck, or
something like that?

W. O. Lucy.

A. He told me he wanted to let me out of that agreement, said I was too tight.

Q. Did he say anything else, either of you say anything about your getting stuck?

A. He said as well as I remember, he said, "I don't want to stick you. I don't want to hold you that agreement. You were too tight, didn't know what you were doing."

Q. Do you remember?

A. I said, "No, I was not. I have been stuck before, I am going through with it."

Q. That was before you had talked to your brother over the telephone?

A. That is right.

Q. You didn't talk to your brother until that night?

A. About ten o'clock that night.

Q. Then the next conversation that you had with Mr. Zehmer was when?

A. Tuesday night.

Q. At his place?

A. Yes, sir.

Q. You had Mr. Barrow with you?

A. Yes, sir.

Q. How did that happen?

page 122 } A. He was just riding with me.

Q. Did you go up there for the purpose of seeing Mr. Zehmer?

A. Yes, sir.

Q. Did you ask him to go with you?

A. Yes, sir. He said he would go with me.

Q. Did you particularly want Mr. Barrow with you during the conversation you were going to have with Mr. Zehmer that night?

A. No, sir.

Q. You had no reason you say, to think that Mr. Zehmer did not regard this as a contract at that time?

A. I did not.

Q. Your conversation with Mr. Zehmer at Mr. Batte's house then hadn't made the impression on you he did not regard it as a contract?

A. Did not?

Q. Yes.

A. No, sir.

Q. Mr. Barrow just happened to be along?

A. Yes, sir.

Q. You had the conversation, and you knew that Tuesday

W. O. Lucy.

night, anyhow, that Mr. Zebmer didn't regard himself as having a contract with you?

A. That is the first time. He told me, he said page 123 } that he wasn't going to sell it. I said, "You know you sold that place fair and square." I told him that Saturday night.

Q. On that previous occasion when you had discussed buying this farm belonging to Mr. Zehmer, he did tell you that he was saving it for his son, it wasn't for sale?

A. He never mentioned his son to me. He didn't mention saving it for his son, no, sir.

Q. Just told you it wasn't for sale?

A. He had told me it wasn't for sale.

Q. He didn't mention his son?

A. No, sir.

Q. You didn't think it was any joke about this matter at all?

A. I didn't, no, sir.

Q. You feel that you were sober at the time?

A. As far as knowing what I was doing, yes, sir. I figured if a man goes out that far in selling something it is no joke.

Q. You deny that Mr. Zehmer told you before you left that place that this was no deal?

A. Yes, sir.

Q. The reason he refused your money was that he didn't intend to make any contract, you deny that?

A. I deny that.

Q. You deny that the discussion that you had in page 124 } respect to whether you had \$50,000.00 or not was a joke?

A. Yes, sir. Everybody knew he didn't expect me to have \$50,000.00 in my pocket. Wasn't going to pay for the place that night.

Q. Did you have \$50,000.00 in the bank?

A. I was capable of raising \$50,000.00.

Q. As a matter of fact, you raised it by getting your brother to go in with you?

A. Not necessarily.

Q. But you did do that?

A. I did.

Q. You did it at once, you had it in mind at the time that is what you were going to do?

A. Yes.

Q. You don't remember the detail of the conversation be-

W. O. Lucy.

tween you and Mr. Zehmer with respect to whether you had or didn't have \$50,000.00?

A. How was that again?

Q. You don't recall in detail any more conversation between you and Mr. Zehmer with respect to whether you had or hadn't \$50,000.00? You had some conversation about it, do you remember anything definitely he said or that you said on that subject that you haven't testified to?

A. I know he mentioned maybe joking me about not having \$50,000.00, said, "You haven't got that kind of money." I said, "You sell me the place and I will show you whether I can get \$50,000.00 or not."

Q. It was sort of a dare between you fellows that you didn't have \$50,000.00, and you were going to show him, isn't that right?

A. No, sir.

Q. You didn't think that he was drunk?

A. No, sir, as far as I knew he was not.

RE-DIRECT EXAMINATION.

By Mr. Baugh:

Q. Did you pay Mr. Barrow for examining the title to this property?

A. Yes, sir.

Q. What amount?

A. \$50.00.

Q. The question has been asked you why Mr. Barrow was with you at McKenney that night. Is he a personal friend of yours, and are you all accustomed to riding around together at night occasionally?

A. Yes, sir.

Q. Was that the only reason he was with you that night?

A. Yes, sir.

Q. With reference to the \$50,000.00, had you not sold half interest in the property to your brother, could you have raised the \$50,000.00 on this property and other property that you owned?

A. Yes, sir.

Q. If I understand your testimony correctly, Mr. Lucy: You testified that you did offer Mr. Zehmer \$50,000.00 for the farm, and that he agreed to sell it for \$50,000.00?

A. Yes, sir.

Q. And that if he would put that in writing, you would take the property?

J. C. Lucy.

A. Providing title was satisfactory.

Q. Provided title was satisfactory?

A. Yes, sir.

Q. And does this agreement Exhibit A embody the offer and acceptance and the conclusion of that deal for that time?

A. Yes, sir.

Q. Did you think that this memorandum in writing from your experience of a number of years in the lumber business was a sufficient agreement for the sale?

Mr. White: I object to the question on the ground that is cross examination of your own witness. This is a question for the Court to determine.

page 127 } Mr. Baugh: I will withdraw the question.

Q. After you received this piece of paper, Mr. Lucy, was there anything left to be done about closing the deal except to have the title examined, raise the purchase price and receive the deed?

A. No, sir.

Q. Do you know the assessed value of this property for taxation purposes in Dinwiddie County?

A. I do not.

Q. Do—

Mr. Harrison: It is stipulated by and between counsel that the Ferguson Farm is assessed at \$6,300.00 of which \$6,040.00—excuse me, assessed at \$6,300.00 of which \$640.00 represents the assessed value of the buildings, and \$5,660.00 represents the assessed value of the land. Taxes for 1952 were \$116.55.

And further this deponent saith not.

Signature waived by agreement of counsel.

page 128 } MR. J. C. LUCY,
one of the complainants, first being duly sworn,
testified as follows:

DIRECT EXAMINATION.

By Mr. Harrison:

Q. Please state your name and age?

A. J. C. Lucy, 48 years of age. Occupation, lumberman, merchant.

Q. You reside at Dolphin in Brunswick County?

J. C. Lucy.

A. I live there, but my office is here at Lawrenceville.

Q. You are a former commissioner of revenue of Brunswick County?

A. Yes, sir.

Q. Presently a member of the Board of Supervisors from Sturgeon District?

A. Yes, sir.

Q. You are a brother of W. O. Lucy and one of the complainants in this suit?

A. Yes, sir.

Q. Do you have any interest in the purchase of the Ferguson Farm located at Darvills District, Dinwiddie County, Virginia?

A. Yes, sir.

page 129 } Q. Made by your brother W. O. Lucy from Mr. A. H. Zehmer and wife, December, 1952?

A. Yes, sir. I agreed to purchase half interest in it.

Q. From the date of the title examination by B. Hunter Barrow, an Attorney practicing law at Dinwiddie Courthouse, Virginia, have you and W. O. Lucy been in a position to pay \$50,000.00 cash for this property?

A. Yes, sir.

Q. Could you have done it individually if necessary?

A. I think so.

Q. Could W. O. Lucy have done it individually if necessary?

A. I think so, could have done it at this bank here.

Q. Do you consider \$50,000.00 the reasonable fair market value of the property as of December 20, 1952?

A. I do.

Q. As one of the parties interested in this purchase, are you still ready and willing to pay the entire sum of \$50,000.00 for this purchase for your part thereof?

A. Yes, sir.

Q. Do you offer to do so in open Court?

A. Yes, sir, this afternoon.

Q. It has been testified by W. O. Lucy, one of the complainants, that he called you on Sunday night, which
page 130 } would be December 21, 1952, and asked if you would be interested in taking a half interest in this purchase made by him from Mr. Zehmer, is that true?

A. That is true.

Q. That was when you agreed to come in with W. O. Lucy on the purchase?

A. Having confidence in his judgment I agreed to do it, to purchase it without looking at it.

J. C. Lucy.

CROSS EXAMINATION.

By Mr. Goode:

Q. Mr. Lucy, you didn't talk with Mr. Zehmer about this farm at all, did you?

A. No, sir. My brother called me on the night of the 21st, told me what he had done, that he had purchased this farm, and to be perfectly frank with you I didn't know who he purchased it from.

Q. Had you ever been over or appraised the farm, or looked at it yourself?

A. Yes, sir.

Q. Had you prior to this time?

A. No, sir.

Q. And in other words, prior to that time you didn't know anything about the farm or who your brother was buying it from?

page 131 } A. No, sir, I didn't know about it. Having explicit confidence in his judgment if he was willing to give \$50,000.00 for it, \$25,000.00 or \$10,000.00 I was agreeable.

Q. You told him that when he called you over the telephone Sunday night?

A. Yes, sir, I told him I would take half of it.

Q. You didn't sign any papers to that effect?

A. No, sir, but I expected of course to do that. We still have a few people whose words are as good as their bond. I didn't have all of my part of the money in my pocket, but arrangements could be made for the money.

Q. In other words, you were not known in the deal at all when they were discussing it at McKenney?

A. No, sir.

Q. And the telephone call—

A. So far as I know I was not.

Q. The telephone call and arrangements you made were after that?

A. Yes, sir, on the night of the 21st, if I recall correctly.

RE-DIRECT EXAMINATION.

By Mr. Harrison:

Q. You have testified on cross examination and said on the Monday following your conversation with W. O. page 132 } Lucy on Sunday you made arrangements for your half of the purchase money?

J. C. Lucy.

A. What I didn't have. Most of it I did make arrangements for. I had part of it.

Q. What arrangements did you make if that is not too indelicate a question?

A. I went to a local bank and told them that I had recently purchased, told them the story. I had recently purchased a half interest in a \$50,000.00 farm with my brother, and I was going to need from \$15,000.00 to \$20,000.00. Of course they said all right. I have a line there, as you know. I have a line and I can borrow to the line at anytime.

By Mr. Goode:

Q. You didn't have to sign anything at all at that time, you just told them you were going to need it?

A. That is right.

And further this deponent saith not.

Signature Waived by Agreement of Counsel.

* * * * *

page 2 }

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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.

page 3 } 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
page 4 } too much of him.

Q. Did he come into the lunchroom that night while you were there?

A. Yes, sir.

Q. About what time did he come in?

A. Well, I don't know. We had closed, we usually close around 9 o'clock. We were closed.

Q. And you had closed when he came in?

A. Yes, sir.

Q. Who was in the lunchroom with you when Mr. Lucy came in?

A. Mrs. Zehmer and myself.

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

A. Yes, sir.

Q. How much later did he come in?

A. I don't know exactly, I was busy cleaning up; after he got through at the service station, it was.

Q. Would you say it was as much as 15 or 20 minutes after Mr. Lucy came in that Mr. Zehmer came in?

A. Yes, sir.

Ethel J. Chappell.

Q. Did you or Mrs. Zehmer have any conversations with Mr. Lucy before Mr. Zehmer came in?

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

Q. Was he talking to Mrs. Zehmer or just sitting there quietly?

page 5 } A. He was mouthy.

Q. He was mouthy?

A. Yes.

Q. You mean he was talking a whole lot?

A. Yes, sir.

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

A. They were laughing and joking, talking along.

Q. Were they doing anything else?

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

Q. They were drinking together?

A. Yes, sir.

Q. And laughing and talking?

A. Yes, sir.

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

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

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

A. Yes, sir.

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

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

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

page 6 } A. I was sweeping and all, and I heard him tell Mr. Zehmer I will give you so much for the farm. He said, "You haven't got that much", and he said, "Oh, yes, I will give you that much."

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

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

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

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

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

Ethel J. Chappell.

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

Q. Mr. Lucy said what?

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

Q. Where was the paper when he took it?

A. On the counter.

Q. On the counter of the lunchroom?

A. Yes.

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

A. Yes, sir.

page 7 } Q. Did you see him read it?

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

Q. What did he do after that?

A. About a minute he left.

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

A. Not that I recall.

Q. Did you see any money offered?

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

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

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

Q. Was that after he read the paper?

A. Yes.

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

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

Q. Is that what he said?

A. It was all a joke.

Q. Did Mr. Lucy take the money back?

page 8 } A. I was back there sweeping up and working around, and I don't know where the money went to.

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

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

Q. And Mr. Lucy left after that?

A. Yes.

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

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

Q. Both of them appeared to be drinking right much?

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

Ethel J. Chappell.

CROSS EXAMINATION.

By Mr. Harrison:

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

A. Yes.

Q. Is there more than one room there?

A. Yes.

Q. How many rooms are there?

A. There are two sides to it, store part and then page 9 } the dining room part.

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

A. Yes.

Q. Is there a kitchen attached to it?

A. Yes.

Q. Were you doing any work in the kitchen?

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

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

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

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

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

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

A. Yes.

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

A. I don't know.

Q. Approximately?

A. We never counted them up.

Q. Fifty?

A. I guess so.

Q. How long have you worked there?

A. Four years.

page 10 } Q. Do you wait on tables there?

A. Yes, sir.

Q. Can you seat as many as thirty?

A. I reckon you can seat more than thirty. Like I said, around 45 or 50, in the dining room and in the other part, too.

Q. What other part are you speaking of?

A. Store part and the dining room.

Q. How large is the store part?

A. Have stools around the counter and two booths.

Q. How many tables?

Ethel J. Chappell.

A. Six, that will seat four, and a big one that will seat six in the dining room.

Q. So that it is a combination between the dining room and the store part, is that right?

A. Yes.

Q. You were working preparing for the next day's activity?

A. Yes.

Q. You were sweeping; filling the sugar dishes, salt and pepper shakers, and what else were you doing?

A. Cleaning the coffee urn.

Q. What else?

A. Washing glasses, cleaning off the counter and things like that.

page 11 } Q. Just doing everything that was necessary to be done?

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

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

A. Yes, sir.

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

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

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

A. No.

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

A. Yes, as I was working.

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

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

page 12 } Q. Didn't you hear Mr. Lucy offer to buy the farm, Mr. Zehmer's farm?

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

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

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

Ethel J. Chappell.

Q. Did he offer to buy the farm?

A. Or he wanted to buy it.

Q. Ma'am?

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

Q. Did you hear him offer to buy it?

A. Yes.

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

A. Yes.

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

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

Q. Did you see him sign it?

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

Q. Would you recognize that check if you saw it again?

A. No, because I was at a distance when he was
page 13 } doing that. Didn't see what was on the paper.

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

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

Q. Did you see Mrs. Zehmer sign it?

A. No, because I was some distance away.

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

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

Q. You say they were all three together?

A. They were all three there close together.

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

A. No.

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

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

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

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

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

A. That is the way I saw it.

page 14 } Q. Then what you are telling us is that Mr. Zehmer wrote out the agreement and that by the time he got through writing out the agreement Mr. Lucy reached over, got it and put it in his pocket, is that right?

Ethel J. Chappell.

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

Q. But you are telling us that whatever it was that—

A. I was some distance across the room.

Q. But you are saying—

A. I was sweeping.

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

A. Uh huh.

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

A. I didn't see any of that.

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

A. Uh huh.

Q. And you didn't—

A. Time he got through putting whatever it was on the paper Mr. Lucy said, "Let's see it", and he reached page 15 } over there and took it.

Q. You never saw Mrs. Zehmer sign it?

A. No, I did not.

Q. They were all three right there together?

A. Yes.

Q. When you saw what you saw, and about which you testified?

A. They were all three sitting near each other.

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

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

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

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

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

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

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

A. No.

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

A. I didn't hear anything he said.

Q. You didn't hear Mr. Lucy say anything after page 16 } he picked up the agreement, is that right?

A. No.

Ethel J. Chappell.

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

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

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

A. All along.

Q. Said it was a joke all along?

A. Yes.

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

A. Yes.

Q. Are you sure of that?

A. Yes.

Q. That he was using the word "joke" all along. Then what was all the conversation about, Mrs. Chappell?

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

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

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

Q. You said he raised it, though. How much did page 17 } he raise it?

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

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

A. Well, I don't know.

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

A. The only one that I heard.

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

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

Q. Until after Mr. Lucy left?

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

Q. For how long?

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

S. E. Winn, Jr.

being sick.

page 18 } Q. You said Mr. Lucey staggered a little bit when
he left, but Mr. Zehmer was sober, is that right?

A. They both had been drinking.

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

A. They were both pretty tight.

Q. Was he drunk?

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

Q. Would you say he was drunk?

A. (Pause) I don't guess you would call them drunk ex-
actly, but they were drinking.

Q. They both had been drinking?

A. Yes.

And further this deponent saith not.

Signature waived by agreement of counsel.

page 19 } S. E. WINN, JR.,
a witness introduced in behalf of the respondents,
first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Goode:

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

A. Yes, sir.

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

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

Q. Is that in Dinwiddie County?

A. Yes.

Q. Were you born and raised in Dinwiddie County?

A. Yes, sir.

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

A. Yes, sir.

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

A. Yes, sir.

Q. Have you known this farm for some time?

A. Yes, sir.

page 20 } Q. Have you ever undertaken to buy this farm or
the timber on the farm from Mr. Zehmer?

A. Yes, sir, several times.

S. E. Winn, Jr.

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

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

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

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

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

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

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

A. Yes, sir.

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

A. Yes, sir.

Q. Do you know the name of his son?

A. Ford Zehmer, yes, sir.

Q. Do you know the last date in December of
page 21 } 1952 that the last conversation took place, sir?

A. No, sir.

Q. But you do know it was in December?

A. Yes, sir.

Q. Was it prior to December 20?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Baugh:

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

A. No, sir.

Q. Had you offered to purchase it?

A. Yes, sir.

Q. What happened on that occasion?

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

Q. When did you make that offer?

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

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

A. No, sir.

Q. Any price discussed?

John Will Rives.

A. No, sir.

page 22 } Q. How many times have you discussed the purchase of timber with Mr. Zehmer on this farm?

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

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

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

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

A. Yes, sir.

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

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

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

A. That is right.

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

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

Q. I see.

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

page 23 } Q. Did you ever make Mr. Zehmer a definite offer of so many dollars for this timber?

A. No, sir.

And further this deponent saith not.

Signature waived by agreement of counsel.

JOHN WILL RIVES,

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

DIRECT EXAMINATION.

By Mr. Goode:

Q. You are Mr. John Will Rives?

A. Yes, sir.

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

A. I am 57 years of age, Game Warden. live in McKenney.

Q. How long have you know Mr. A. Hardy Zehmer?

A. All my life.

John Will Rives.

Q. How long have you know the Ferguson Farm page 24 } on Route 40?

A. Have known that a long time, too.

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

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

CROSS EXAMINATION.

By Mr. Harrison:

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

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

Q. How much did you offer him for it?

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

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Appeal and <i>Supersedeas</i> Awarded	1
Record	2
Bill of Complaint	2
Answer of A. H. Zehmer	5
Answer of Ida S. Zehmer	7
Decree—Entered October 21, 1953	9
Assignments of Error	10
Depositions:	
Walter Huskey	11
Paul McClelland	12
Rennie W. Bridgman	16
Mrs. A. H. Zehmer	18
A. H. Zehmer	33
Albert Carr	49
W. O. Lucy	51
J. C. Lucy	70
Ethel J. Chappell	74
S. E. Winn, Jr.	82
John Will Rives	84
Stipulation	10

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.