fore defective, and demurrer to that portion of the bill which seeks to restrain the collection of the sewerage taxes will be sustained.

In the case of *Brown* v. *City of Denver*, 3 Colo. 169, which presents the same questions substantially, with this additional fact: The plaintiff is a citizen of Colorado, and comes into this court invoking the jurisdiction of the federal courts, on the ground that his property is being taken without "due process of law," in violation of the provision of the fourteenth amendment. I do not think it is necessary to say any more than I have said. It does not seem to me that under the allegations of the bill it can be held that there was a lack of due process of law, and I do not think that a citizen of the state can come into the federal courts and litigate with a citizen of the state any other than a federal question. So I have not considered several questions made by counsel as to supposed infractions of other portions of the constitution.

The special plea to the jurisdiction will be sustained.

PARKHURST and others *v.* HOSFORD and another.

(Circuit Court, D. Oregon. October 31, 1884.)

1. VENDOR AND VENDEE—INADEQUACY OF CONSIDERATION.
   Mere inadequacy of price is not sufficient to avoid the sale of real property; but when such inadequacy is gross, and the vendor was needy and of weak mind, and acted upon the impression that he was indebted to the vendee, when he was not, equity will give relief by treating the vendee as the trustee of the property for the benefit of the vendor or his representatives. Four hundred dollars *held* to be a grossly inadequate price for property worth not less than $1,500.
2. INSANITY—OPINION OF NON-PROFESSIONAL WITNESS.
   Upon the trial of an issue involving the sanity of a person, the opinion of a non-professional witness, based upon his own observations, is competent evidence, and is entitled to weight according to the intelligence of the witness, his means of information, and the character of the derangement.
3. VENDOR AND VENDEE—NOTICE OF PRIOR EQUITY.
   A purchaser of real property for a valuable consideration is not affected by notice of a prior adverse equity received from a stranger or person not interested in the property; nor will mere rumors or hearsay concerning such equity, and communicated by such person, be sufficient to put him on inquiry, and charge him with knowledge of the facts that he might have thereby learned.

Suit to Set Aside a Conveyance.

Rufus Mallory and *William M. Ramsey*, for plaintiffs.

W. H. Holmes, for defendant Hosford.

E. J. Dawne, for defendant Schindler.

DEADY, J. The plaintiff C. T. Parkhurst and 15 others, citizens of Kansas, Illinois, Massachusetts, Indiana, New York, and California, respectively, bring this suit against E. F. Hosford and John Schindler, citizens of the state of Oregon, for relief against a conveyance made by Lewis Parkhurst in his life-time to the defendant Hosford, of a tract

of land situate in Polk county, and containing 318 acres; and also a subsequent conveyance made by said Hosford of a portion of the same premises to the defendant Schindler, upon the ground of the insanity or imbecility of Parkhurst at the date of the conveyance to Hosford, and the inadequacy of the consideration therefor. The case was heard on the bill, answer, and replication thereto, and the evidence. The defendants answered separately, but not under oath. The answer of Schindler contains the defense that he was a purchaser in good faith and for a valuable consideration, and also the statute of limitations. The answers, not being under oath, are not evidence for the defendants, and the rule invoked by counsel for Hosford, that his answer must be taken for true, unless overcome by the testimony of two witnesses, or that of one witness and circumstances equivalent to another, does not apply. The answer of Hosford admits the conveyance from Parkhurst to him, and from him to Schindler, but denies the insanity of the former, and the inadequacy of the consideration, and the alleged value of the premises now and at the time of such conveyances. The evidence is voluminous and quite contradictory on the disputed points. The plaintiffs examined 32 witnesses, whose testimony covers 305 legal cap pages, while the defendants examined 37, whose testimony covers 416 such pages.

The following facts are admitted or satisfactorily proven:

Lewis Parkhurst was a native of Dana, Massachusetts, from whence he emigrated to Wisconsin in 1843, and thence to Oregon in 1848. Soon after, he occupied the premises in question, and some time in 1850 became a settler thereon, under the donation act of September 27th of that year. Having subsequently complied with the provisions of said act, the land was set off to him by the proper authority as claim No. 70, and on February 9, 1866, a patent was issued to him therefor. This donation includes parts of sections 8, 9, and 10, in township 7 S., of range 3 W., and is situate in Polk county, on the west bank of the Wallamet river, about three miles below Salem. About one-third of it is prairie, and the rest of it is covered with scattered timber and brush, and the greatest portion of it is bottom land, consisting of a dark sandy loam, and in extreme high water is subject to overflow. Parkhurst was born in 1817, and was never married. He lived alone in a cabin on his donation, and maintained himself principally by days' work in the nelghborhood. The defendant Hosford and his brother, C. O. Hosford, settled on the public land adjoining Parkhurst's donation about 1849, and for some years thereafter the latter worked more or less as a sawyer in the defendants' saw-mill. Parkhurst was a Methodist, and so are the Hosfords,—C. O. Hosford being a preacher in that denomination,—and on this account, as well as their nearness of residence, Parkhurst appears to have been more intimate with them than any one else, and had great confidence in the defendant. In time he seems to have been possessed with the idea that he was Jesus Christ, the lion of Judah, and claimed the right to have carnal communication with women at his pleasure.

In 1860 he was arrested on a charge of an indecent assault upon a woman of the neighborhood, a connection of C. O. Hosford's, and was discharged on giving bond in the sum of $250 for his good behaviour. The evidence on this point is indefinite, but nothing more was done in the matter, and it is probable that the charge was not well founded, and was predicated as much on his foolish talk about women as anything else. But, however this may be, Parkhurst was by some means impressed with the idea that he was in

danger of being mobbed on that account, and left the county and went to C. O. Hosford's, who had about the same time removed to Multnomah county, and settled a short distance east of Mt. Tabor, for whom he worked on the farm about three months. Then he probably went to the east of the Cascade mountains, in the direction of the gold mines that were discovered there about this time. In the winter of 1861-62, C. O. Hosford says he roomed awhile in Portland, and that he worked for him again six weeks during the summer of 1862, and in the fall of that year he returned to his donation and assisted the defendant Hosford in building a house on the latter's place. In the spring of 1863 he left the county again and went to Washington territory, and "took up" a homestead on Mill plain, about two miles back of the Columbia river and eight miles above Vancouver, and about six miles east of C. O. Hosford's place. In January, 1864, he sent a letter from there to C. O. Hosford for the defendant, in which he proposed to sell the latter his donation for the sum of $400, stating, at the same time, it was "worth $5,000 in gold and silver," but that he was willing to sell it for "a little price," so as to pay the defendant Hosford what he owed him, which he said was "about two hundred and fifty dollars," and to "get a little money" for his present needs. On the receipt of this letter the defendant Hosford went to his brother's place, from which they both went to Mill plain, where they found Parkhurst alone in a hut in the timber, and very anxious for $150, wherewith to purchase an outfit to enable him to be employed in driving cattle to the mines east of the Cascade mountains. On the same day—February 12th—the terms of the sale were agreed on, and they all then went to Vancouver, where Parkhurst executed a conveyance of the premises to the defendant Hosford, which the latter had prepared beforehand and brought with him, in the presence of C. O. Hosford and H. K. Hines, a Methodist preacher of that place, in consideration of the sum of $400, paid as follows: $200 in currency as the equivalent of $150 in coin, though it was not then worth more than 65 cents on the dollar, and the discharge of the said indebtedness of $250, without interest, although the defendant wanted to charge interest thereon for four or five years at the rate of 2 per centum per month.

Within a year after this transaction Parkhurst returned to the neighborhood of the defendant, without any means, and took up his abode in the old cabin on his donation, saying, with much emphasis, that he had come to stay there. Thenceforth he led an aimless, doless life, living mainly on raw vegetables, going dirty and ragged, and often sleeping in the fence corners, saying that the devils would not let him sleep in the cabin, until August 18, 1866, when, on the petition of sundry of the neighbors, he was brought before the county judge of Polk county and duly committed to the insane asylum, under the act of September 27, 1862, (Or. Laws, 620,) as an indigent, insane person, where he remained until his death, on November 30, 1879, leaving the plaintiffs, his brothers and sisters, or their children, his sole heirs. When first committed to the asylum, Parkhurst was classed among the "doubtful" patients, but after two years he was placed among the "incurables," where he remained until his death. To the last he was impressed with the idea that some persons in Polk county wanted to kill him; and he also fancied some one was trying to chloroform him.

The evidence as to the value of the donation is very contradictory; but I am satisfied that, at the date of the conveyance to the defendant, it was not worth less than five dollars an acre, and probably more. Mr. B. F. McClench, a disinterested and competent witness, who has lived witnin four miles of the land since 1852, swears that in 1864 it was worth from six to eight dollars an acre, and from twelve to fifteen dollars at the commencement of this suit. But the sale by

the defendant Hosford of two-thirds of the land to the defendant Schindler in 1881, for $8.50 an acre, is a material circumstance upon this question of value. It has been suggested in the argument that Hosford made this sale for less than the land was really worth, under the apprehension that the heirs were about to claim it. But there is no direct proof to that effect, and nothing in the circumstances gives any countenance to the suggestion. The grantor appears to be a shrewd man, in good circumstances, and no immediate want of money. Neither did the sale exonerate him from liability in the premises, as his deed to Schindler contained a covenant of general warranty, for any breach of which he is well able to respond in damages.

But the consideration named in the deed—$400—is less than one-third of the real value of the property at the time of the sale, and upon any view of the matter this must be regarded as a grossly inadequate price therefor. *Seymour* v. *Delancey*, 6 Johns. Ch. 222; 2 Pom. Eq. Jur. § 927, note 3. But, as Parkhurst had a right to sell his land to Hosford for any price he chose, or even give it to him, the mere fact of gross inadequacy of price is not of itself sufficient to avoid the sale. 1 Story, Eq. Jur. § 245; *Seymour* v. *Delancey*, 6 Johns. Ch. 232; 2 Pom. Eq. Jur. § 926. But the disproportion between the price and the value of the subject is so great in this case as to cast the burden of explanation on the vendee, and require him to show that the vendor, with a true knowledge of all the circumstances, deliberately fixed on this price. But where the transaction purports to be a sale, and there is nothing in the circumstances of the case or the relations of the parties to suggest that the vendor intended or might have made the vendee the recipient of his bounty, under the guise of a sale, for a very inadequate or merely nominal consideration, such gross inadequacy of price may furnish satisfactory evidence of some serious overreaching or advantage on the part of the vendee as would justify the interference of a court of equity. Story, Eq. Jur. § 246; 2 Pom. Eq. Jur. § 928, note.

Now, there is nothing in the circumstances of this case to indicate that Parkhurst might knowingly and deliberately dispose of his property to Hosford for anything less than its real value. His only apparent motive for making the sale to Hosford was to pay him what he seemed to think he owed him, and to obtain a little money to meet his present and urgent necessities. Add to this what I think was always present in his mind, the apprehension of danger from parties in Polk county, which made him more or less afraid to live there. He declared at the time of the disposition of the property that it was worth "five thousand dollars in gold and silver," and although there was an attempt made, both in the evidence and the argument, to show that he meant $500, it came to nothing. Parkhurst was evidently a man of limited education, and the letter in which he proposed to dispose of his donation is somewhat difficult in places to decipher, more on account of the chirography than the orthography,

though that is peculiar; but the words "five thousand dollars" are as plain as any in it, and could not well be mistaken for "five hundred." And, *first*, was Parkhurst mistaken about the indebtedness to Hosford; and was he induced to part with his land upon a false impression in that respect? There is no doubt but Parkhurst thought he owed Hosford $250, and I think the discharge of this obligation was a controlling circumstance in the disposition of his property to the latter. Upon the evidence, minus Parkhurst's admission, however, I am of the opinion that the indebtedness is not proven; and that the attempt to do so is very unsatisfactory, and calculated to cast suspicion upon the whole transaction.

In the spring of 1883 the plaintiff C. T. Parkhurst came to Oregon to look after this matter for himself and co-plaintiffs. They had lost sight of the deceased, and do not appear to have known anything of his death or the disposition of his property until 1881. Parkhurst visited the defendant Hosford at his house twice in the month of April, 1883, with a view of a settlement. According to Parkhurst's testimony, Hosford first told him that the deceased owed him $800, and that he bought the property for $600, having done so to get what he owed him, but on looking at the deed admitted he only paid $400. Hosford also produced the letter from the deceased, and read it to the witness as if the latter had said the place was worth only $500 instead of $5,000, and his wife, who was present, read it the same way. Hosford said this $800 was for money loaned to the deceased to live on, and $250 he had to pay as security on a bond to get the deceased out of jail, and money he had to pay the sheriff for expenses. At the second interview, Hugh V. Matthews was present with Parkhurst, and he testifies that on that occasion the latter taxed Hosford with having read the letter to him on the former interview wrongly in respect to the phrase "five thousand dollars," and Hosford did not deny it. Both testify that he admitted that the deceased was a weak-minded man and sometimes insane on the subject of religion, but claimed that he was all right at the time of the sale and conveyance of the land. In his testimony Hosford denies having read the letter wrongly in respect to the value of the land, or that he told the plaintiff he went security for the deceased, and had to pay $250 on that account or to get him out of jail, but stated that he was indebted to him in the sum of $250 for small amounts of money loaned to him at one time and another, he could not say when, and for $172 or $72 advanced to Mr. Holman, sheriff of the county, when deceased was under arrest, to enable him to go east of the mountains, and that he never kept any memorandum of these transactions, or took any obligation or acknowledgment from the deceased on account of them. In his answer Hosford states that this sum of $172 or $72 was advanced by him to some one, presumably the sheriff, at the request of Parkhurst, as he understood, to procure his discharge from imprisonment. But it does not appear that he had any personal communica-