

organization of this railroad was acceptable to the defendants, and that so he was entitled to recover; and, *secondly*, the ground that no matter how he performed his contract these matters were subsequently arranged between the parties, and a promise had been made to pay the ascertained balance of \$6,000. As to the above grounds I was unable on the trial to see how the jury could find for the plaintiff. As to the first ground, the plaintiff was permitted to go into that, although under his declaration this was perhaps a mere matter of inducement. He was permitted, however, to show, if he could, performance of the contract. Now, it must be admitted that there was no actual performance of the contract proven. Taking all the evidence, I think the weight of it was against the plaintiff, and so presented it to the jury.

On the second point, as to the subsequent arrangement between the parties, the testimony of the plaintiff was not direct. He did not swear that there was an actual ascertainment of this balance. He merely says he understood it so. He does not testify to any unqualified promise. Under these circumstances, a verdict in favor of the defendants would have been satisfactory to the court. Now, the jury erroneously have found a verdict for a sum less than the plaintiff would have been entitled to recover if his case had been made out by satisfactory proof. But this is not prejudicial to the plaintiff. It does not do him any wrong. He has no right to complain. We do not sit here to correct formal errors made by the jury that do not hurt any one. The parties who are injured by this verdict are the defendants, not the plaintiff. But the defendants do not move for a new trial. The jury might have found a verdict generally for the defendants, but because the jury have given the plaintiff what he is not entitled to, it certainly does not lie in the mouth of the plaintiff to allege any wrong, nor is it the duty of the court to set aside the verdict.

Motion refused.

SPINDLE *v.* SHREVE and others.

(Circuit Court, N. D. Illinois. ———, 1880.)

1. **TRUST—CHILDREN—CREDITORS.**—The owner of property has the right to provide that his estate may be held in such a way that his children may receive the rents and profits of it during their lives, so as not to go to the benefit of creditors, if they should be improvident or unfortunate.

Nichols v. Eaton, 91 U. S. 716.

2. **SAME—SAME—SAME.**—In such case it is not necessary that a will should declare in terms that the property is to be held free from creditors, where such intent is sufficiently manifest from the language used.

Gwynn Garrett, for complainant.

Charles A. Gregory, for defendants.

DRUMMOND, C. J. Thomas T. Shreve, of the city of Louisville, Kentucky, during his life-time, was the owner of some real estate situated in Chicago, and made his will, under which the question in this case arises. At the time of his death he left several children, and for them he made this provision in his will: "As soon after my death as it can be conveniently done, I wish my executor, after first setting apart a fund sufficient to pay the above-named special devises and incidental expenses, to make out a full and complete list and schedule of all my estate, of every character and description, real, personal, and mixed, in the state of Kentucky and elsewhere, and hand the same to the following-named persons, to-wit, James W. Henning, A. C. Badger, and A. Harris, who, or any two of them, I desire to proceed to value it and divide it into five equal shares, upon the principles hereinbefore indicated. One-half of each share (which half I wish to be income-paying real estate) I desire to be set apart and conveyed to a trustee, to be held for the use and benefit of each child during his or her life, and then descend to his or her heirs, without any power or right on the part of said child to encumber said estate, or anticipate the rents thereof. But said trustee shall collect said rents, and, after paying taxes, insurance, and keeping the property in repair, pay the rent to the child in