the intestate. It also contained a count in indebitatus assumpsit for work and labour by the plaintiff, as administrator, laying the promise to the plaintiff as administrator.

Special demurrer, assigning for cause, that a count on a cause of action accruing to the plaintiff as administrator since the death of the intestate, could not be joined with counts on promises to the intestate in his lifetime.

Thomas, in support of the demurrer. A count for work done by the administrator, on promises to him, cannot be joined with counts for goods sold and work done by the intestate, on promises to him. It is a general rule, that whenever the subject-matter of the action would, when recovered, be assets, the executor or administrator may sue in his representative character: *Cowell* v. *Watts* (6 East, 405), *Ord* v. *Fenwick* (3 East, 108). The sum claimed by the last count, being for work and labour done by the plaintiff after the death of the intestate, could not be assets, neither would it be liable to probate duty. [Lord Abinger, C. B. Suppose this was work done in completing a contract of the intestate's, as for instance, in finishing a coat which he had undertaken to make, and commenced making, and had provided materials for completing it; the money, when recovered, would be assets. Parke, B. The administrator may think it for the benefit of the estate to go on with the work the intestate had contracted for, and was bound to complete. If there is any possible case **[191]** in which an executor can be bound to complete the contract of his testator, then the money, when recovered, would be assets. Alderson, B. In order to sustain your argument, you must make out that an administrator can, in no case, complete a contract of his testator, and recover for it in his representative character. Lord Abinger, C. B. An executor may not be compellable to perform the contract of his testator; but if a man makes a contract to do a specific thing, as to build a wall, and he dies before the wall is finished, his executors could not recover for the work until the wall is finished. Parke, B. In *Ord* v. *Fenwick*, which was an action for money paid by the plaintiff as executrix, Lord Ellenborough expressly says,—"If we can suppose a case where the money must have been paid by the plaintiff as executrix, and for which she must entitle herself to recover as such, the judgment may be sustained." Now, this may have been work done by workmen employed by the administrator in finishing a contract of the testator, and paid out of the assets. *Marshall* v. *Broadhurst* (1 C. & J. 403) is an express authority that an executor may recover for work and labour as executor.]

Judgment for the plaintiff.

BECKE, Assignee of Wm. Ashton, an Insolvent Debtor *v.* SMITH. Exch. of Pleas. 1836.—The 32nd section of the Insolvent Debtors' Act, 7 Geo. 4, c. 57, does not apply only to such assignments and transfers as are made within three months before the commencement of the imprisonment, or during the continuance of such imprisonment, but extends to assignments made at any time, even a year previous to the imprisonment, if made with the view or intention of petitioning the Court for the insolvent's discharge.

[S. C. 2 Gale, 242; 6 L. J. Ex. 54.]

Trover for certain cattle, goods, and chattels, the property of the said Wm. Ashton. Pleas—1st, Not guilty; 2ndly, That the said Wm Ashton was not possessed as of his own property of the cattle, goods, and **[192]** chattels in the declaration mentioned, modo et formâ; and issue thereon.

At the trial before Bolland, B, at the last assizes for the county of Northampton, it appeared that an action for money had and received had been brought against the insolvent by one Wright, which was tried at the Northampton Spring Assizes 1834, and was undefended. It was proved also, that on the commission day of the assizes at which the above cause was to be tried, the insolvent gave a bill of sale of all his household furniture and effects to the present defendant, in satisfaction of a bonâ fide debt to the amount of 100l. The defendant sold the effects under the bill of sale for 57l. 18s. On the day the bill of sale was given, the insolvent ran away from Northampton, but returned in March, 1835, when he went to prison, and petitioned to be discharged under the Insolvent Debtors' Act, and was ultimately discharged accordingly, and the plaintiff was appointed his assignee. This action was brought to recover the value of the goods taken and sold under the bill of sale by the defendant,

the plaintiff insisting that the bill of sale was fraudulent and void under the 32nd section of the 7th Geo. 4, c. 57, it being a voluntary conveyance, made with a view of petitioning for his discharge under the Insolvent Act. The learned Judge, however, was of opinion that the 32nd section applied to such assignments and transfers only as were made within three months before the commencement of the imprisonment, or during the continuance of the imprisonment, and that this bill of sale having been given more than a year before the imprisonment began, the act did not make it invalid. The plaintiff then went on to prove a case of fraud, independently of the provisions of the Insolvent Act, under the stat. of Eliz.; but on the case being submitted to the jury, they found that the transaction was not fraudulent, and gave a verdict for the defendant. Humfrey, on a former day in this term, obtained **[193]** a rule to shew cause why there should not be a new trial, on the ground of misdirection.

Adams, Serjt., and Whateley, shewed cause. It is submitted that the learned Judge was right in his direction to the jury. The question depends upon the construction to be put upon the 7 Geo. 4, c. 57, s. 32, which enacts, that if any prisoner, who shall file his petition for his discharge under the act, shall, before or after his imprisonment, being in insolvent circumstances, voluntarily convey his property to any creditor, every such conveyance shall be deemed, and is thereby declared, to be fraudulent, and void as against the provisional assignee; provided always, that no such conveyance shall be so deemed fraudulent and void, unless made within three months before the commencement of such imprisonment, or with the view or intention by the party so conveying, of petitioning the said Court for his discharge from custody under that act. Now, the meaning of that section is, that the assignment shall not be deemed fraudulent and void, unless it be made within three months before the party goes to prison; or, if he has previously gone to prison, then with the intention of petitioning for his discharge from custody. The intention of the act was to put a certain limit to the operation of that section, which is but reasonable. [Alderson, B. Suppose there were pregnant evidence that three months and one day before he went to prison, an insolvent made a voluntary conveyance of his property, you would say it was not within the act, and the deed could not be impeached.] Certainly, that may be the consequence. The proviso is to be construed, reddendo singula singulis; the assignment is to be void, whatever his intention was at the time of making it, if he goes to prison within three months, but not otherwise; or if, being in prison, he makes the assignment with the view of petitioning for his discharge. One part of **[194]** the proviso is intended to apply to the case of a party before he goes to prison, but who goes to prison within three months after the assignment; the other to the case of a party being in prison, who makes the assignment with a view to petition for his discharge. The case was therefore properly left to the jury.

Humfrey, Waddington, and White, in support of the rule. The case of *Wainwright* v. *Miles* (3 M. & Scott, 211), is a decision against the construction relied upon on the other side. There the sale of the insolvent's effects took place more than three months before the insolvent was arrested and went to prison, and the Court held, that it was a question for the jury whether the assignment was made with an intention of taking the benefit of the Insolvent Act. That question could not have arisen, unless the Court had thought that the 32nd section applied to a case like the present. The object and intention of the legislature was to make void all voluntary conveyances by persons in insolvent circumstances, provided they give a fraudulent preference to a particular creditor; but that it shall not be necessary to adduce any evidence of the fraud, if the insolvent goes to prison within three months, in which case it is to be deemed ipso facto fraudulent and void; if it is beyond the period of three months, then it must be shewn that it was made with the view or intention of petitioning for his discharge. The object of the legislature was to favour the distribution of the insolvent's effects equally amongst all his creditors. Then, if the construction put at the trial was not right, there ought to be a new trial, as it ought to have been left to the jury to say, whether the insolvent executed this deed with the view or intention of petitioning for his discharge under the Insolvent Act.

Cur. adv. vult.

[195] The judgment of the Court (*a*) was now delivered by

(*a*) Parke, B., Bolland, B., Alderson, B., and Gurney, B.

PARKE, B. The only question which remained for consideration, after the argument against the rule for a new trial in this case was, as to the true construction of the 32nd section of the 7 Geo. 4, c. 57. It occurred to my Brother Bolland on the trial, that the section applied to such assignments and transfers only as were made within three months before the commencement of the imprisonment, or during its continuance; and the assignment in question having been made more than a year before the insolvent went to prison, he thought that this section could not render it void. The plaintiff is entitled to a new trial, if that view of the subject was incorrect; and upon consideration, we all agree that it was.

It is a very useful rule,(*b*) in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.

Let us adopt that rule in this case. The 32nd section enacts, "That, if any prisoner, who shall file his or her petition for his or her discharge, under this act, shall, before or after his or her imprisonment, being in insolvent circumstances, voluntarily convey, assign, transfer, charge, deliver, or make over any estate, real or personal, security for money, bond, bill, note, money, property, goods or effects whatsoever, to any creditor or creditors, or to any person or persons in trust for, or to or for the use, benefit, or advantage of any creditor or creditors, every such con-**[196]**-veyance, assignment, transfer, charge, delivery, and making over, shall be deemed and is hereby declared to be fraudulent and void, as against the provisional or other assignee or assignees of such prisoner appointed under this act: provided always, that no such conveyance, assignment, transfer, charge, delivery, or making over, shall be so deemed fraudulent and void, unless made within three months before the commencement of such imprisonment, or with the view or intention by the party so conveying, assigning, transferring, charging, delivering, or making over, of petitioning the said Court for his or her discharge from custody under this act."

By the first part of the clause, every voluntary conveyance to a creditor, by one who afterwards petitions for his discharge, made either before or after his imprisonment, whilst he is in insolvent circumstances, is avoided. Then comes the proviso, by way of qualification of the foregoing provision, which enacts, that no such conveyance shall be void, unless made within three months before the commencement of the imprisonment, or, with a view of petitioning the Court for his discharge. If either of these circumstances occurs, the voluntary conveyance by an insolvent is rendered null; if made within the three months it is void; if made at any time, with a view of petitioning the Court, it is void, for there is not a word expressly to confine the last alternative within any limit of time: and though, at first sight, the words, "with a view of petitioning for his discharge," might strike the reader as applying to persons then in custody, such is not necessarily their meaning. In reality, they are just as applicable to a person out of prison, as to one in prison. The construction contended for by the plaintiff is, therefore, according to the words of the clause; it is, besides, a very reasonable one. The effect is this. As voluntary preferences are usually given on the eve of the taking the benefit of the act, a time is fixed (three months) within which, **[197]** to prevent many questions, all voluntary conveyances to a creditor, made when the debtor is in insolvent circumstances, are avoided: before that time all such conveyances are avoided, where the actual intent to give a preference to a particular creditor is proved; and thus, the same effect is given to the insolvent, as to the bankrupt law, with reference to all anterior transactions.

On the other hand, in order to give to the clause the meaning contended for on the part of the defendant, the grammatical construction must be altered, by introducing some words for the purpose of limiting the operation of the latter alternative: and the clause must be read as if it had been written thus, "Provided that no such assignment, if made before imprisonment, shall be void, unless made within three months before, &c., or if made after, unless made with a view or intention by the party conveying of petitioning the Court for his discharge." But if this were done, this incongruity would arise, that a stronger case would be required to avoid an assignment made after imprisonment than one made before. Besides, if this con-

(*b*) Per Burton, J., in *Warburton* v. *Loveland*, 1 Hudson & Brooke's Irish Reports, 648.

struction were adopted, every assignment made more than three months before the commencement of the imprisonment would be valid, however clear the intention to give a preference might be; and thus the whole object of the act might be defeated by a fraudulent insolvent, who, after conveying all his property to favoured creditors, would only have to go out of the way for three months, and then take the benefit of the act, after which no one assignment of his property could be questioned on the ground of fraudulent preference.

It appears to us, therefore, that the true construction of the clause is, that every voluntary assignment, made by one in insolvent circumstances, is void, whenever made with intention to take the benefit of the act. And this was the clear opinion of the Court of Common Pleas in the **[198]** case of *Wainwright* v. *Miles* (3 Moore & Scott, 211), though the point was not fully argued. It is true, that upon the plaintiff's view of the case, in order to give full effect to the intention of the legislature, and to embrace all cases of voluntary transfers, both before and after imprisonment, the language of the clause (not very accurately drawn) must in one respect be understood, not according to its strict sense: and the words "within three months before the commencement of the imprisonment," which, strictly construed, exclude the time of imprisonment, must be read so as to include it, and taken to mean "within a period commencing three months before the imprisonment;" otherwise one of the inconveniences above pointed out, as necessarily resulting from the defendant's construction, would follow, namely, that a conveyance after imprisonment, though voluntary, would be protected, unless made with a view and intention of petitioning.

To obviate such an incongruity, common to both the constructions, according to the strict grammatical sense, the words must be thus slightly varied.

We are of opinion, for these reasons, that the rule must be made absolute for a new trial, when the question to be submitted to the jury, with reference to this section, will be, whether the assignment was made by the insolvent, when in insolvent circumstances, voluntarily, and with the view and intention by him of petitioning the Insolvent Court for his discharge from custody.

If all these circumstances concur, the plaintiff would be entitled to a verdict, but otherwise he would not.

Rule absolute.

[199] BAKER *v.* BROWN. Exch of Pleas. 1836.—In an undefended action on a mortgage deed, the plaintiff's counsel inadvertently took a verdict for the principal money only, omitting to include the interest. The Court refused to increase the verdict.

[S. C. 2 Gale, 223; 6 L. J. Ex. 11.]

Petersdorff applied to the Court to increase the amount of the verdict in this case, from the sum of 1025*l.* to 1058*l.* It was an action on a mortgage deed for payment of the former sum, with interest; and at Nisi Prius, the cause being undefended, the plaintiff's counsel inadvertently took a verdict for the principal sum only, omitting to calculate the interest; and it was entered accordingly on the record, and on the Judge's notes. In a case in Godbolt's Reports (*Baldwin & Gwine's case*, Godb. 245), where, the plaintiff being entitled to treble damages, the verdict was taken for single damages only, the Court increased the amount accordingly. [Alderson, B. There the Court only gave the finding of the jury its legal effect.]

Per Curiam. We can do nothing but grant a rule to set aside the verdict, if the plaintiff desires it; but it has been entered as it was taken in Court, and we cannot increase it in the absence of the other party.

Motion refused.

JONES *v.* PRITCHARD. Exch. of Pleas. 1836.—In an action for work done to a vessel against one part owner, another part owner is a competent witness for the defendant, after a release.

[S. C. 2 Gale, 186; 6 L. J. Ex. 57.]

Assumpsit for work and labour done by the plaintiff in repairing of ship, of which the defendant was one of the part owners. Plea—non assumpsit. The cause was