

Opinion of the Court.

NEESE, ADMINISTRATOR, *v.* SOUTHERN
RAILWAY CO.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT.

No. 28. Argued November 7, 1955.—Decided November 21, 1955.

1. The District Court's denial of a new trial, upon remittitur of part of the verdict in this case, was not without support in the record, and its action should not have been disturbed by the Court of Appeals. P. 77.
 2. This Court refuses to decide constitutional questions when the record discloses other grounds of decision, whether or not properly raised here by the parties. P. 78.
- 216 F. 2d 772, reversed.

Henry Hammer argued the cause and filed a brief for petitioner.

Sidney S. Alderman argued the cause for respondent. With him on the brief were *Henry L. Walker* and *Frank G. Tompkins, Jr.*

PER CURIAM.

We reverse the judgment of the Court of Appeals without reaching the constitutional challenge to that court's jurisdiction to review the denial by the trial court of a motion for a new trial on the ground that the verdict was excessive. Even assuming such appellate power to exist under the Seventh Amendment, we find that the Court of Appeals was not justified, on this record, in regarding the denial of a new trial, upon a remittitur of part of the verdict, as an abuse of discretion. For apart from that question, as we view the evidence we think that the action of the trial court was not without support in the record, and accordingly that its action should not have been disturbed by the Court of Appeals.

We need not consider respondent's contention that only the jurisdictional question was presented by the petition for certiorari, for in reversing on the above ground we follow the traditional practice of this Court of refusing to decide constitutional questions when the record discloses other grounds of decision, whether or not they have been properly raised before us by the parties. See *Peters v. Hobby*, 349 U. S. 331, 338; *Alma Motor Co. v. Timken-Detroit Axle Co.*, 329 U. S. 129, 132, 136, 142.