

ON RULE TO SET ASIDE VERDICT.

Before McKENNAN and BUTLER, JJ.

PER CURIAM. Is the verdict clearly against the weight of the evidence? This alone, of the several questions embraced in the reasons assigned for setting aside the verdict, need be considered. The principal question on the trial related to the sufficiency of the Raritan bridge to vent the water of the stream, in time of flood. The defendant had an unquestionable right to change the bridges or culverts over the small stream eastward, as the jury was instructed, and the only legitimate reference that could properly be made to what was done there, was in explanation of the fact that the principal damage is of recent date. These changes could not be made a cause of complaint. In considering the sufficiency of the bridge (or rather whether the company had failed in duty by erecting it as it did) the necessities and interests of the railroad, as well as those of the land-owners, must be borne in mind. These considerations involve questions of safety to the public and company, and also of cost. Where the situation is such that the construction of a proper bridge, suited to the circumstances, must necessarily obstruct the stream, to some extent, the land-owners must submit to the obstruction, and the company must make compensation for the damages likely to ensue, as a part of the consequences of building the road. Where a stream, flowing through low lands, spreads out, when flooded, to great width, many times its usual size, a railroad company, crossing it, is not necessarily required to erect a bridge of corresponding length; nor resort to trestles instead of embankments. What should be done under such circumstances must be

## ON RULE TO SET ASIDE VERDICT.

settled by engineering skill and judgment. It does not appear that the spans of the bridge in question might not be increased in number and length, if this is necessary to vent the water without obstruction. It is not shown, however, with clearness that the water is obstructed and thus forced out of the channel. On the contrary the weight of the evidence fully justifies a conclusion that it is not. Furthermore, the damages awarded are greatly in excess of the injury shown, arising from this source, even supposing the bridge a proper subject of complaint. The jury has manifestly overlooked or disregarded the fact that the defendant possesses rights on the plaintiff's land, for which he or his predecessors in the ownership were paid when the road was constructed. No error is discovered in the ruling on the trial, nor in the charge, but for the reasons stated the verdict must be set aside. This action is the more imperatively necessary because the verdict, if allowed to stand, would virtually, if not actually, settle the question of enlarging the bridge, as well as the amount due for past injury. The rule to show cause is therefore made absolute, and a new trial is granted.