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jury to a different verdict. This must be understood as the practice in this court, and such is the requirement of our twenty-first rule. By that rule it is ordered that when the error assigned is to the admission or rejection of evidence, the specification shall quote the full substance of the evidence offered, or copy the offer as stated in the bill of exceptions. This is to enable the court to see whether the evidence offered was material, for it would be idle to reverse a judgment for the admission or rejection of evidence, that could have had no effect upon the verdict.

But for the reception of the statement made by the captain, shortly before the arrival of the boat at Davenport, the judgment must be reversed.

JUDGMENT REVERSED, and a

VENIRE DE NOVO AWARDED.

EXPRESS COMPANY v. WARE.

1. This court will not examine evidence to ascertain whether a jury was justified in finding, as it has done, on an issue of fact.
2. Where a statute of limitation enacts that a defendant's absence from the State will prevent its running, but that "in the case of a foreign corporation, if it has a managing agent in the State, service of the writ may be made on *him*," on a question of fact arising in a suit brought more than five years after the cause of action had accrued, whether the defendant did or did not have a managing agent for the State prior to the time when the suit was brought, it is proper to charge that the time during which the plaintiff was disabled from suing by reason of defendant having no managing agent in this State is not to be counted as part of the five years' limitation period.

ERROR to the Circuit Court for the District of Nebraska; the case being thus:

The Code of Nebraska bars actions upon contract in five years. The defendant's absence from the State is not, how-

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ever, to be computed. But in the case of a foreign corporation, if it has a managing agent in the State, service of the writ may be made upon such managing agent.*

These provisions of the code being in force, Ware delivered, on the 29th of September, 1864, and during the late rebellion, to the United States Express Company a quantity of gold, to be carried by it from Nebraska City to New York. The company by its receipt undertook to carry the gold, but exempted itself from any loss by "the acts of the enemies of the government, or insurrections, or any of the dangers incident to a time of war."

The company carried the gold on the Hannibal and St. Joseph Railroad, which crosses the north part of Missouri.

At the time when this gold was delivered, that part of Missouri was in a high state of commotion with the rebellion, rebels being nearly as numerous as loyal persons, and of equal or greater activity. In the course of the transit upon the railroad just mentioned, a body of eighty armed rebels, on the 3d of October, 1864, fired into the train of cars, and stopped and robbed it, carrying off this gold.

Hereupon, on the 27th of February, 1870—more than five years after the loss—Ware sued the express company, serving the writ upon a managing agent of it, and alleging that the route at the time of the transportation was unsafe; that the express company was guilty of negligence in carrying gold on it; and that there was, at the time, a safe and suitable route across the State of Iowa, which the company could have and ought to have used. The company set up its special contract and an exemption under it.

Evidence was given by both sides as to the safety or danger of travel on the Hannibal and St. Joseph Railroad on and about the 3d of October, 1870. Trains, it appeared, up to that date had been running regularly, but it appeared equally that tracks had been torn up in places, that a train had been fired into as it passed and a brakeman killed, and that from the generally disturbed condition of the region, there was

* Revised Statutes of Nebraska, 395, 396, 404.

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with many persons a greater or less degree of fear that trains would be captured.

Evidence was also given on both sides—on the company's to show, that at the time of the loss and for some time afterwards, the company did have a "managing agent," and that, therefore, as suit could have *then* been brought by a service on *him*, the present action not having been brought till the 27th of February, 1870, was barred by the statute of limitations—and on the part of the plaintiff to show that there was no "managing agent" on whom service could be made prior to the said 27th of February, when the suit was actually brought.

The court below charged the jury:

"If you find that the defendant had a managing agent within the State at the time of the loss, then the statute began to run from that time, and if it had such agent in the State for the next five years after the loss, then this action is barred, but otherwise it is not. In other words, to bar this action the plaintiff must have been able for five years before suit brought to have sued the defendant in this State, and compelled it to answer the suit by a service upon a managing agent therein."

Verdict and judgment having been given for the plaintiff the express company brought the case here, assigning for error—

1. That the evidence of negligence did not support the verdict.
2. That the action was barred by the statute of limitations, and that the court erred in its instruction on that point.

Mr. J. M. Woolworth, for the plaintiff in error; Mr. Clinton Briggs, contra.

The CHIEF JUSTICE delivered the opinion of the court.

We see no error in the charge, and cannot examine the evidence to ascertain whether the jury was justified in finding as it did upon the issues of fact.

JUDGMENT AFFIRMED.