#### Perry *vs.* Cochran.

On a motion for a new trial on the ground of newly discovered evidence, the newly discovered evidence should be fully set forth, or the motion must be overruled. The finding of a jury, or of the court below, acting as a jury, upon a question of fact, is final and conclusive.

Appeal from the superior court of the city of San Francisco. Conflicting evidence was adduced by the different parties upon the points in controversy in the superior court, and the court, before whom the cause was tried without a jury, found in favor of the plaintiff, and gave judgment accordingly. A motion was then made by the defendant for a new trial on the ground of newly discovered evidence, but it was not set forth in the papers on which the motion was founded, what the newly discovered evidence was, which the defendant expected to be able to produce in case a new trial should be granted. The court below denied the motion, and the defendant appealed from the judgment thereupon rendered.

— -, for plaintiff.

—-, for defendant.

*By the Court,*

Bennett, J.

The motion for a new trial on the ground of newly discovered evidence was properly overruled by the superior court.

There is no other question in the case. The other grounds upon which the appellant asks to have the judgment reversed, are all matters of fact, involving no principle of law, and in regard to which we have often decided that the finding of a jury, or of the court below sitting as a jury, must be final and conclusive.

Judgment affirmed.