of the jury panel, one of whom, the man referred to in Van Camp's affidavit, and who was one of the jury empanelled to try this action, having said: "The damn dago had no business running a 'bus in opposition to the regular 'busman and should have stuck to delivering fruit, as that is what his business was and the rig was for." Mr. Donaldson says in cross-examination upon his affidavit: "They had as good a right to carry passengers, in my estimation, as any one else so long as they had a proper conveyance."

Mr. Hutcheson, for the defendant, objected to VanCamp's affidavit as to what occurred in the jury-room being received; but I cannot bring myself to believe that the rule or principle invoked by him can be carried so far as to exclude the statement as to what this juror said. The truth of VanCamp's statement is not impugned; and it hardly lies in the mouth of the defendant, who wrote to the foreman of the jury a letter of inquiry as to what had occurred in the jury-room, and who made use of the information received in answer, to object to the admission of VanCamp's affidavit.

In hotels and barber shops, being places where "men most do congregate," this action was discussed, and evidently prejudice was manifested against the plaintiffs owing to their nationality. At the Central hotel in Brockville remarks were made in the hearing and presence of two members of the jury empanelled to try this case; while at the barber shop in Athens people said that if they were on a jury they would not give a verdict in favour of the plaintiffs because of the defendant being a home man. The situation being as above stated, how great will be the temptation—no matter to what extent the defendant personally may seek to keep himself from participation therein—to influence against the plaintiffs jurors on the panel at a future sitting of the Court. Under all the circumstances, I consider that this action is one which ought to be tried without a jury, and I do order and direct that the issues shall be tried and the damages (if any) shall be assessed without a jury, and that the jury notice shall be struck out.

Costs of this application to be costs in the cause.

CORRECTION.

In WHITNEY v. SMALL, ante 188, in the reasons for judgment of HODGINS, J.A., at p. 191, the word "appellant," wherever it occurs, should be "respondent."