

March 3, 1980

LB 892

but I was wondering one thing, Senator Johnson, and I notice in your amendment as I read it, it says that if you desire trial through a jury, I was wondering what happens if we adopt your amendment whereby somebody would like to have a hearing other than trial by jury, perhaps a trial in front of a judge, where they could have representation by counsel. Of course, they would have to go through this and then go to the second hearing, I assume. Is that correct?

SENATOR JOHNSON: Yes. Senator Nichol, the reason that you, in my opinion, that we have to make certain that a defendant who is haled into the small claims court can have a trial by jury is because the Constitution effectively guarantees to every defendant, not only in criminal cases, but in civil cases where the amount exceeds \$25, to a trial by jury. So that is why it is there.

SENATOR NICHOL: Yes. What about those under \$25, would they still be able to do this?

SENATOR JOHNSON: Yes, they could still request a trial by jury and affect a removal and the reason why simply is because they don't run up against the constitutional problem.

SENATOR NICHOL: I just haven't heard of any complaints, Senator Johnson, about the system not working as it is other than your bringing it up at this moment.

SENATOR JOHNSON: I can appreciate your not hearing it, Senator Nichol. It just may be that you're moving in some different circles than I am moving and I really have heard many, many complaints about it.

SENATOR NICHOL: I was wondering, even though you may have had many complaints, if it is a preponderance of numbers or if it is just once in awhile that this happens, because as I understand, the small claims court is working quite well the way it is.

SENATOR JOHNSON: I think the small claims court works quite well in spite of the provision that presently exists. It would work a lot better with the provision. I, personally, have seen...a number of people have come to me as a lawyer and have said, would you please represent me. The defendant has removed the case from the small claims to the municipal court and there are times when I will represent the individual but I do know it is happening quite frequently.

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