

March 3, 1980

LB 892

SENATOR NICHOL: Well, they remove it quite often to a higher court, of course. All they have to do is say so, as I understand.

SENATOR JOHNSON: That is right.

SENATOR NICHOL: But do you want it it has to go to a trial by jury?

SENATOR JOHNSON: Yes, I want to say simply that once a defendant is haled into small claims he is stuck in small claims. He can't get it out except if he wants a trial by jury. If he loses in small claims, he can take an appeal under the existing laws of the district court. It is a total retrial. He can bring in his own lawyer. So he is fully guaranteed all of his rights and the process is not confounded along the way which is what presently happens.

SENATOR NICHOL: Would you be agreeable to take that trial by jury out so that he can advance it to a higher court without having to have a trial by jury?

SENATOR JOHNSON: I am afraid if I take it out I might render the statutes unconstitutional. I don't know that to a certainty but that is why I would not want to take it out.

SENATOR NICHOL: Perhaps we could look at this between now and Select File to see if this were...would you do that, please?

SENATOR JOHNSON: I'd be more than happy to do that, if the amendment carries, we will look at it between now and Select File.

SENATOR NICHOL: All right.

SPEAKER MARVEL: Senator Vickers, and then Senator Murphy.

SENATOR VICKERS: Yes, Mr. President, I would like to ask Senator Johnson a question if I may. Senator Johnson, when you strike the language to transfer the case to a regular docket and insert instead trial to a jury, do I understand that you are saying, in effect, that you have to have a trial by jury and you cannot go to the regular docket whereby you could have a trial with the judge making the decision, is that correct?

SENATOR JOHNSON: That is correct.