

March 3, 1980

LB 892

this blending, parties who are absent at the appointed time for hearing are being allowed to ask the small claims court to set aside judgment and hold a rehearing on the matter. This merely adds an additional delay, an additional cost, which is contrary to the intent of the small claims court. This bill would provide the party absent at the time of the hearing must follow the appeals procedure of the small claims court rather than ask for a retrial. I move for the adoption of the committee amendments, Mr. Chairman.

SPEAKER MARVEL: The motion is the adoption of the committee amendments to 892. All those in favor vote aye, opposed no. Senator Kelly, your bill is the next. You have a bill coming up as soon as this is disposed of. Record.

CLERK: 25 ayes, 0 nays on adoption of the committee amendments.

SPEAKER MARVEL: Another motion on the desk.

CLERK: Mr. President, Senator Johnson moves to amend and his amendments are on page 617 of the Journal.

SENATOR JOHNSON: Mr. Speaker, members of the Legislature, my amendment is a simple amendment. It returns the small claims court act to the way it was initially drafted and the way it has existed up until about three or four years ago. What it does...I am sorry, at this time any defendant in a small claims action may immediately remove that small claims action to the regular court for the case to then proceed as any other case would customarily proceed. When a plaintiff goes into small claims, they go without a lawyer and that is a function of small claims. A function of small claims court is to allow an individual with a minor lawsuit to be without representation. They go in without a lawyer, and in theory, the defendant should be there without a lawyer. If the defendant comes in with a lawyer, the lawyer has no place in small claims and the small claims act specifically says so. So what some defendants are now doing is they are just automatically removing the case from the small claims docket to the regular docket because in the regular court they can then have a lawyer to represent their interests. Now the plaintiff who came into small claims without a lawyer feels compelled to get a lawyer, or if he or she cannot afford a lawyer, to then proceed effectively against a represented defendant and there is a total inequality in the way one can then perform. Now the way the bill was originally written in 1972, it said that a small claims case could be removed from a small