ment were placed in rather a false position because their judgment had been reversed presumably on the advice of technical advisers which they were not in a position to have. I do not know of particular instances before the Supreme Court, but I may say that the judges of the court are unanimous in this.

Mr. MACLEAN (Halifax): Will the minister tell us why the words 'and try' are put in this clause? It seems to me that these two words might properly be eliminated, because the Court of Appeal does not try those cases, it simply hears appeals.

Mr. DOHERTY: It is quite true that the court hears appeals, but the moment you give them power to bring in assessors, they do not proceed exclusively upon the record that comes to them from the court below. In reality they introduce into the case something in the nature of a proceeding of trial.

Mr. MACLEAN (Halifax): I do not think so. It is not an uncommon practice in the Admiralty Court for the Admiralty judge to call in an assessor. The assessor is not part of the court. He is there to advise largely on technical matters, and if assessors were called in to assist the Supreme Court in Admiralty appeals, one could hardly designate the proceedings as a trial. They could not change a word of the evidence. The assessors might assist the appeal court in interpreting the evidence taken in the court below, but they would simply be an aid to the court on technical matters. It seems to me that the words 'and try' serve no good purpose.

Mr. DOHERTY: The court in the first instance might call in an assessor, and while, as regards the evidence, the Court of Appeal would be held down to the record as it came to them, if it called in assessors, it would not be bound in any way by the advice given by the assessor in the court below. It might possibly happen that the reason for reversing the judgment of the court below would turn, not on anything in the record which originally came to it, but upon the technical advice. To that extent, when they call in an assessor, they call in some one to give them information in the nature of expert evidence.

Mr. MACLEAN (Halifax): It would only be as counsel presents argument to the court.

Mr. DOHERTY: That is precisely what the assessor could have done in the court of first instance.

Sir WILFRID LAURIER: That has not been done.

Mr. DOHERTY: I take it that this may be done in the court of first instance if the court had called in an assessor. I understand that what the assessor says to the court does not go into the record as part of the evidence. He sits there and advises with the court, and the court sitting in the first instance has the advantage of that advice. When we come to the appellate court, this measure would give them the advantage of the advice of men of a similar class, but we have no means of knowing that the advice they would get would be exactly the same. So that, giving them power to call in assessors, is giving them power to introduce into the record something that was not in the record brought to them. I cannot see that the words 'and try' can do any harm, because all that the appellate court has to do is to try and hear the appeal.

Mr. MACLEAN (Halifax): You may be extending the jurisdiction of the court as an appellate court.

Mr. DOHERTY: If we enabled them to try anything else except the appeal, but the words empower them to 'try and hear such appeal.' All they can do is to hear the appeal.

Mr. MACLEAN: There is no such thing as trying an appeal.

Mr. DOHERTY: That may not be absolutely the correct expression. For myself, personallly, I do not think any harm would be done by leaving it out. This is the first time my attention has been called to these words. They do not seem to have been susceptible of any particular meaning. On the other hand, I cannot see any possible undesirable consequences of their remaining there. These are words which the court itself has submitted as being desirable and out of deference to the court, unless some real harm is pointed out as being likely to result, I would prefer to adopt the suggestion as it is.

Sir WILFRID LAURIER: If the judges of the court have asked for this power it ought to be given consideration, but I do not know that I would favour the proposition at all. I can well appreciate that the court below that tried the case might call an assessor if it desired to do so. But in a case, I believe, the parties themselves would call a witness, because the assessor cannot be anything else than a witness, to give an expert statement in regard to the matters at issue. The parties might call this expert and he might be a competent man to give evidence in a case of that nature. If the judge below thinks that he requires the services of an assessor, he can get them. But the court which is called upon to review the judgment of the court below must take the