Mr. Phelps' argument is therefore founded on false premises.

But what was the attitude of Mr. Fish in 1870 on this question? In his despatch above referred to, with reference to the seizure of American vessels for violation of the Fishery Laws of the Dominion, he expressed himself as follows:—

"It is the duty of the owners of the vessels to defend their interests before the Courts at their own expense, and without special assistance from the Government at this stage of affairs. It is for those Tribunals to construe the Statutes under which they act If the construction they adopt shall appear to be in contravention of our Treaties with Great Britain, or to be (which cannot be anticipated) plainly erroneous in a case admitting of no reasonable doubt, it will then become the duty of the Government—a duty which it will not be slow to discharge—to avail itself of all necessary means for obtaining redress."

Mr. Phelps returns to the charge about the seizure of the "David J. Adams." The vessel was really seized for buying bait, and he challenges us to produce any Imperial or Canadian Statute under which buying bait is prohibited and made punishable. He says that this is not a technical objection, for the absence of any such Statute shows that the treaty was never intended to prohibit the purchase of bait for the purposes of lawful fishing outside of the 3-miles limit.

But it cannot seriously be disputed that the Treaty prohibited American fishing-vessels from entering Cana dian waters for any but the four purposes specified (viz., shelter, repairs, wood, and water)—exceptions dictated by motives of humanity, and which, in practice, would extend to any circumstances of *vis major*. There can be no doubt that, by the Treaty of 1818, the United States' Government bound themselves to these stringent conditions, and renounced the rights which they now claim, in consideration of the rights of inshore fishery in common with British subjects, secured to them by the same Article of the Treaty, on the coasts of Newfoundland and Labrador and the Magdalen Islands.

The United States' Government, in support of their claim to use Canadian ports for the purpose of buying bait and other purposes connected with lawful fishing outside of the 3-miles limit, appeal to the negotiations which preceded the Treaty of 1818, during which the United States' negotiators declined to accept a clause proposed by the British Commissioners, to the effect that American fishing-vessels should carry no merchandize—from which they say it is to be inferred that the liberty to trade was insisted on and reserved. This argument was used in the annual Message of the President of the United States for 1870 ("Foreign Relations," p. 11). It is repeated again in Mr. Bayard's note of the 10th May.

But it is shown in the Report of the Canadian Minister of Marine (Print, Part II, p. 27) that this argument is founded on an entire mistake; for the proposal of the British Commissioners, which was rejected, had no reference to American vessels resorting to the Canadian coasts, but to those exercising the right of inshore fishing and of landing for the drying and curing of fish on the coasts of Newfoundland and Labrador and the Magdalen Islands. The Report of the Canadian Minister, on the other hand, recalls the most important fact that during the same negotiations the United States' Commissioners proposed that *the right of procuring bait* should be added to the four objects for which exception is made in the Treaty to the prohibition against entering Canadian waters, and that such proposal was rejected by the British Commissioners, showing that there could be no doubt in the minds of the negotiators as to the meaning of the prohibition.

It is pointed out, moreover, that at the Halifax Commission the United States' Commissioners in the case submitted on behalf of their Government, distinctly admitted that the privilege of traffic and of purchasing bait and other supplies in Canadian ports could not be claimed by United States' fishing-vessels as of right; that they had only been enjoyed on sufferance, and might be stopped at any time.

Our own Law Officers have advised to the same effect (Print, Part II, p. 42); but they are of opinion that by the existing law a vessel is only liable to forfeiture if "found fishing or preparing to fish, or to have been fishing" and not for "purchasing bait," which act taken by itself is only slight evidence of "preparing to fish," especially as it is stated that bait is used almost exclusively for deep-sea fishing.

The seizure of the "Davdi J. Adams" will therefore probably be held by the Canadian Courts to have been unwarranted by law.

But as the purchase of bait is a violation of the Treaty, the vessel will escape punishment only on technical grounds, by reason of the insufficiency of the law to enforce the obligations of the Treaty.