

these nations, which had deliberately fixed upon three propositions as expressive of the law of nations, in their judgment, for the purposes of this trial, that a resort to general instructions for the purpose of interpretation was necessary. Eleven canons of interpretation drawn from Vattel are presented in order, and then several of them, as the case suits, are applied as valuable in elucidating this or that point of the rules. But the learned counsel has omitted to bring to your notice the first and most general rule of Vattel, which, being once understood, would, as we think, dispense with any consideration of these subordinate canons which Vattel has introduced to be used only in case his first general rule does not apply. This first proposition is that *'it is not allowable to interpret what has no need of interpretation.'*" (Washington Treaty Papers, vol. iii, pp. 446, 447.)

In a letter of Mr. Hamilton Fish to the United States' Minister in England on the same subject, dated the 16th April, 1872, the following view was set forth:—

"Further than this, it appears to me that the principles of English and American law (and they are substantially the same) regarding the construction of Statutes and Treaties, and of written instruments generally, would preclude the seeking of evidence of intent outside the instrument itself. It might be a painful trial on which to enter in seeking the opinions and recollections of parties, to bring into conflict the differing expectations of those who were engaged in the negotiation of an instrument." (Washington Treaty Papers, vol. ii, p. 473.)

But even at this barrier the difficulty in following Mr. Phelps' argument, by which he seeks to reach the interpretation he desires, does not end. After taking a view of the Treaty which all authorities thus forbid, he says, "Thus regarded, it appears to me clear that the words, 'for no other purpose whatever,' as employed in the Treaty, mean for no other purpose inconsistent with the provisions of the Treaty."

Taken in that sense, the words would have no meaning, for no other purpose would be consistent with the Treaty excepting those mentioned. He proceeds, "or prejudicial to the interests of the provinces or their inhabitants." If the United States' authorities are the judges as to what is prejudicial to those interests, the Treaty will have very little value; if the provinces are to be the judges, it is most prejudicial to their interests that United States' fishermen should be permitted to come into their harbours on any pretext, and it is fatal to their fishery interests that these fishermen, with whom they have to compete at such a disadvantage in the markets of the United States, should be allowed to enter for supplies and bait, even for the pursuit of the deep-sea fisheries. Before concluding his remarks on this subject, the Undersigned would refer to a passage in the answer on behalf of the United States to the Case of Her Majesty's Government as presented to the Halifax Fisheries Commission in 1877: "The various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, *who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing Laws or the re-enactment of former oppressive Statutes.*"

Mr. Phelps has made a lengthy citation from the Imperial Act 59 Geo. III, cap. 38, for the purpose of establishing—

1. That the penalty of forfeiture was not incurred by any entry into British ports, unless accompanied by fishing, or preparing to fish, within the prohibited limits.

2. That it was not the intention of Parliament, or its understanding of the Treaty, that any other entry should be regarded as an infraction of the provisions of that Act.

As regards the latter point, it seems to be effectually disposed of by the quotation which Mr. Phelps has made. The Act permits fishermen of the United States to enter into the bays or harbours of His Britannic Majesty's dominions in America for the purposes named in the Treaty, "and for no other purpose whatever;" and, after enacting the penalty of forfeiture in regard to certain offences, provides a penalty of 200*l.* against any persons otherwise offending against the Act. It cannot, therefore, be successfully contended that Parliament intended to permit entry into the British American waters for the purchase of bait, or for any other than the purposes specified in the Treaty.

As to the first point, it is to be observed that the penalty of forfeiture was expressly pronounced as applicable to the offence of fishing or preparing fish. It may be that forfeiture is incurred by other illegal entry, contrary to the Treaty, and contrary to the Statute. It may also be contended that preparing, within the prohibited limits, to fish in any place is the offence at which the penalty is aimed, or it may be that the preparing within these waters to fish is evidence of preparing to fish within the prohibited waters,