

a compact deliberately and solemnly made by two parties, each of whom expressed what he was willing to concede, and by what terms he was willing to be bound. If the purposes for which the United States desired that their fishing-vessels should have the right to enter British American waters included other than those expressed, their desire cannot avail them now, nor be a pretext for a special interpretation after they assented to the words, "and for no other purpose whatever." If it was "preposterous" that their fishermen should be precluded from entering provincial waters "to post a letter," or for any other of the purposes which Mr. Phelps mentions, they would probably never have assented to a Treaty framed as this was. Having done so, they cannot now urge that their language was "preposterous," and that its effect must be destroyed by resort to "interpretation."

But that which Mr. Phelps calls "literal interpretation" is by no means so preposterous as he suggests, when the purpose and object of the Treaty come to be considered. While it was not desired to interfere with ordinary commercial intercourse between the people of the two countries, the deliberate and declared purpose existed on the part of Great Britain, and the willingness existed on the part of the United States, to secure absolutely, and free from the possibility of encroachment, the fisheries of the British possessions in America to the people of those possessions, excepting as to certain localities, in respect of which special provisions were made. To effect this it was merely necessary that there should be a joint declaration of the right which was to be established, but that means should be taken to preserve that right. For this purpose a distinction was necessarily drawn between the United States' vessels engaged in commerce and those engaged in fishing. While the former had free access to our coasts, the latter were placed under a strict prohibition.

The purpose was to prevent the fisheries from being poached on, and to preserve them to "the subjects of His Britannic Majesty in North America, not only for the pursuit of fishing within the waters adjacent to the coast (which can under the law of nations be done by any country), but as a basis of supplies for the pursuit of fishing in the deep sea. For this purpose it was necessary to keep out foreign fishing-vessels, excepting in cases of dire necessity, no matter under what pretext they might desire to come in. The fisheries could not be preserved to our people if every one of the United States' fishing-vessels that were accustomed to swarm along our coasts could claim the right to enter our harbours "to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence," or to "buy medicine" or to "purchase a new rope." The slightest acquaintance with the negotiations which led to the Treaty of 1818, and with the state of the Fishery question preceding it, induces the belief that if the United States' negotiators had suggested these as purposes for which their vessels should be allowed to enter our waters, the proposal would have been rejected as "preposterous," to quote Mr. Phelps' own words. But Mr. Phelps appears to have overlooked an important part of the case when he suggested that it is a "preposterous" construction of the Treaty, which would lead to the purchase of bait being prohibited. So far from such a construction being against "its spirit and plain intent," no other meaning would accord with that spirit and intent. If we adopt one of the methods contended for by Mr. Phelps of arriving at the true meaning of the Treaty, namely, having reference to the "attending circumstances," &c., we find that so far from its being considered by the framers of the Treaty that a prohibition of the right to obtain bait would be a "preposterous" and an extreme instance, a proposition was made by the United States' negotiators that the proviso should read thus: "Provided, however, that American fishermen shall be permitted to enter such bays and harbours for the purposes only of obtaining shelter, wood, water, and bait," and the insertion of the word "bait" was resisted by the British negotiators and struck out. After this, how can it be contended that any rule of interpretation would be sound which would give to United States' fishermen the very permission which was sought for on their behalf during the negotiations, successfully resisted by the British Representatives, and deliberately rejected by the framers of the Convention?

It is a well-known fact that the negotiations preceding the Treaty had reference very largely to the deep-sea fisheries, and that the right to purchase bait in the harbours of the British possessions for the deep-sea fishing was one which the United States' fishermen were intentionally excluded from. Referring to the difficulties which subsequently arose from an enforcement of the Treaty, an American author says:—

"It will be seen that most of those difficulties arose from a change in the character of the fisheries, cod being caught on the banks, were seldom pursued within the 3-mile