

tion we look to a municipal act of twenty years standing? Evidently our laws and our attitude are based not on an international power of attorney, but on national title-deeds.

Secretary Bayard's plea that the exigencies of seal fishing demand from us the course we have pursued must, therefore, stand on other ground than that of international authority. There are two arguments wrapped up in it: either he must prove that the exercise of police power is not an act of sovereignty; or else he must hold that the sea, so far as its use is not inexhaustible, as in the case of a fishery, is capable of dominion.

First then, as to the nature of the police power. The argument here is that, although we may have no property in the broad Behring sea itself, no ownership in the seals when swimming through those waters, yet we have the right to police those seas, to regulate fishing.

We need not here discuss the distinction made by writers between property on the one hand and "empire" or sovereignty on the other.¹ There exists no shadow of doubt that the powers exercised by us fall clearly under the head of empire. A single quotation will suffice. Ortolan defines empire as "Un sorte de droit de souveraineté, de tribut, de police ou de juridiction."² How then if a nation has no property in a sea, can it exercise sovereignty over it? As Ortolan says, "Il faudrait donc que ce peuple se prétendit personnellement le supérieur, le souverain des autres * * * L'empire des mers ne peut donc exister au profit de qui que ce soit, pas plus que le droit de propriété."³

The second argument, drawn from the exhaustible nature of seal fishing, is like one given by Mr. Lothrop, when United States Minister to Russia. He had heard it applied in Russia to the fisheries off the coasts of north-eastern Asia. Its substance as given by him is as follows:

¹Martens, IV c. IV § 1, p. 157; Ortolan I, p. 119.

²Ortolan, I, p. 119.

³Ortolan, I, pp. 119 and 120.