TERRITORIAL JURISDICTION.

[PART I.]

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A violation of foreign territory may be justified on the ground of the necessity of self-defense.

In 1837 an insurrectionary movement was made in Upper Canada, having in view a reform in the Government of that province. A proclamation had been issued from Navy Island, in the Niagara River, signed by William Lyon Mackenzie, chairman pro tem. of the provisional government, calling upon the reformers to make that island their place of rendezvous, and to aid otherwise in revolutionizing the province. It stated that the command of the forces was given to General Van Rensselaer, a son of General Solomon Van Rensselaer, of Albany. The sympathy manifested by some citizens of the United States with the Canadian insurgents, induced the governors of New York and Vermont to issue proclamations, warning the citizens of these states to refrain from any unlawful acts within the territory of the United States. Notwithstanding these proclamations, the insurgents were joined by citizens of the United States; whence also they received arms and munitions of war. The steamboat Caroline owned by an American citizen, was said to be engaged in transporting recruits and supplies to the rendezvous on Navy Island; and it was further presumed that this boat would be the means of transferring the expedition to the Canadian shore. Under these circumstances, the British officer in command determined to destroy the Caroline. A force was accordingly despatched for that purpose on the night of the 29th of December, 1837. Not finding her at Navy Island, the party proceeded to her moorings at
Schlosser on the American shore, attacked the crew, one of whom was killed, took the boat into the stream and left it to be carried over Niagara Falls. A proclamation was promptly issued (January 5, 1838), by President Van Buren, enjoining on all citizens obedience to the laws and warning them that the violation of our neutrality would subject the offenders to punishment. General Scott was forthwith ordered to the Canadian frontier to assume the military command there; and requisitions were made upon the Governors of New York and Vermont for such militia force as General Scott might require for the defense of the frontier.

On the other hand, the act was made a subject of complaint by the American government, on the ground of a violation of territory; but it was justified by Great Britain on the ground of the necessity of self-preservation.

The question remained unsettled till 1842, when Mr. Webster, in correspondence with Lord Ashburton, contended, that for such an infringement of territorial rights, the British government must show "a necessity of self-defense, instant, overwhelming, and leaving no choice of means and no moment for deliberation;" and it should further appear that the Canadian authorities, in acting under this exigence, "did nothing unreasonable or excessive, since the act, justified by the necessity of self-defense, must be limited by that necessity and kept clearly within it." Lord Ashburton admitted the correctness of Mr. Webster's doctrine, and asserted that the destruction of the Caroline came fully within its limits: and, though the act was justifiable, an apology for the violation of territory should have been made at the time. This was accepted by the United States as satisfactory, and the subject was allowed to drop. (Parliamentary Papers, 1843, lxi. 46-51; Wharton's Digest of International Law, I, § 50 e; Benton's Thirty Years in the Senate, II, 289, 455.)