

power of the Dominion Legislature over that class of cases. I should like your opinion as to whether or not the jurisdiction of prescribing a remedy for a civil trespass does not belong exclusively to the Provincial Parliament under the British North America Act, 1867?

I observe the Acts respecting petty trespasses in Upper Canada, Con. Stat. U. C. cap. 105, and Statute of Canada, 25 Vic. cap. 22, remain unrepealed. I imagine if either were to be repealed it would have to be done by the Provincial Parliament under the 13th sub-section of section 92 of the British North America Act, 1867; and if similar or any other provisions were to be made by the same Parliament it might well be done under the 15th sub-section of the same section, because there is power given to impose punishment by fine, penalty or imprisonment, for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in that section. The Dominion Act of 1869 purports to repeal the 28th section of Con. Stat. of Canada, cap. 93, as set forth in Schedule B. of Dominion Statute of 1869, cap. 36, p. 410, unless the second paragraph of the 1st section, which provides a very wide field for thought and consideration, that "such repeal shall not extend to matters relating solely to subjects as to which the Provincial Legislatures have under the B. N. A. Act, 1867, exclusive powers of legislation," limits the repeal, and withholds from its provisions certain cases of petty trespass.

It would be interesting to know your opinion as to whether section 28 of Consolidated Statutes of Canada, cap. 93, or the section of the Dominion Statute just referred to is to be regarded as the sole authority for a summary proceeding for a petty trespass not maliciously committed. You will observe that the terms 60th section of the Dominion Statute, and of the 28th section of the Consolidated Statutes of Canada, cap. 93, are not the same. The terms of the latter are, "If any person *wilfully* or *maliciously* commits any damage," &c., and the terms of the former are, "Whoever *unlawfully* or maliciously commits, &c., any damage," &c.

February, 1871.

Yours, &c.,

UNION.

[The above affords an argument for the existence of a competent court to settle all such questions, and thereby avoid involving

people who have to administer the law in trouble. The subject is well deserving discussion. If the expression of our opinion would probably serve a useful purpose, we should not hesitate to consider it in all its bearings. It involves one of many difficult questions of constitutional law which will present themselves for decision under our new political state of existence; but because those of our subscribers who are magistrates, and who are not supposed to be well versed in law, may be misled, we think it well to say as to the first question put by "Union," that the 92nd section of the B. N. A. Act, 1867, confers upon the Provincial Legislature the power (to the exclusion of the Dominion Parliament) to make laws in relation to property and civil rights; and, as a general proposition, we think with that power goes the right to legislate, prescribing remedies and punishments for trespass or injuries thereto—for whatever affects the subject at all, the power to legislate upon it must be confined to one jurisdiction, and cannot be divided between the two legislative bodies—that is, for anything short of, or apart from, a criminal offence. If it be considered necessary to constitute any act or trespass relating to property, or any other subject, a crime, the Provincial Parliament would still possess the undoubted right to prescribe and control the *civil* remedy; the Dominion Parliament alone would have the exclusive jurisdiction to declare the crime and prescribe the procedure and the punishment; but nothing short of enacting a law declaring the crime would take the remedy out of the jurisdiction of the Provincial Legislature.

As to the last question in "Union's" letter, we think the word "maliciously" does not materially affect the question, unless the Dominion Parliament were to declare that the "wilfully AND maliciously," or "wilfully OR maliciously," or "unlawfully OR maliciously" doing certain acts affecting a man's property or civil rights should constitute or be declared a crime or misdemeanor; and for want of that exercise of jurisdiction, we are, as at present advised, of opinion that the 22nd section of C. S. of Canada, c. 93, is still in force, and that it will be probably decided by the Dominion General Court of Appeal when constituted, and that if the Dominion Parliament chooses to exercise jurisdiction on the subject it can only be done by way of making a law in such a form that there will be no doubt of