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Existence of the Act of 1847 is a Question of fact and that their Answer denying the Repeal of the Act of 1847 and averring that it is now in force, must be taken as a fact as it was not put in issue by replication.

Where matters of fact on which the Bill is based are Expressly answered and denied, the Answer is Evidence of its statements, and is to be taken as true but this is so only as to such matters as are to be proved by the Ordinary rules and modes of proof, and is not applicable as to the proof of the Existence of public laws.

Of these the Court will take judicial notice and are made to appear to the mind of the Court by copies thereof published by authority of the State. Acts or facts are stated in the Bill sufficient to sustain the Injunction; these acts are alleged to be wrongful and without authority of law. This is the Complainants opinion of the Character of the acts and of which he is not required to produce proof to the Court. The Defendants in their Answer admit the facts stated in the Bill are true, but they deny that the facts make them wrong-doers, and deny that the acts are without authority of law. This is the opinion of the Defendants of the legal Character of their acts. This Opinion or conclusion of the Defendants is not a matter of fact to be proved to the Court as a matter of fact upon an issue to be raised by the pleadings as to that allegation. It is for the Court to pass upon the legality of facts susceptible of proof appearing upon the Record, and the Court will take official notice of the Existence of the public laws of this State, Md Ch. Dr. 66. 4 Maddox 255, 4 G & J 59 to 63 —

The fact that the Defendants have thought proper to recite a public law in their answer which they Consider in force, cannot alter the case nor give

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it greater force than if not so incorporated in their Answer. And the fact of the Complainants not having put the Existence of that law formally in issue, cannot make it law, if it otherwise would not be. This would permit the parties to become legislators and impose upon the Court the obligation to adopt that legislation as law, when they know it not to be law.

"On a motion to dissolve an Injunction the best test of what are properly averments of fact in a Bill or Answer is whether they are such matters as a witness might be called on to prove or the truth of which must be established by Evidence to enable the Court to act; if they are not then they are Either Sheer principles of Equity or some of those public and Established facts of which the Court is bound to take Judicial notice without any proof whatever" 4 G & J 60.

"It is laid down as clear law that no Evidence can be received to prove the Existence of a fact which must have happened according to the constant and invariable course of nature or to prove any general law or other public matter of which the Courts are bound to take judicial notice" 4 G & J. 63.

This Act of 1847 being a Public Law the Court is bound to take Judicial Notice of its Existence, and determine whether it has been repealed or not, Even if its Existence has not been formally put in issue by the pleadings. Having decided that the Act of 1847 has been repealed and is not now in force, the only remaining Question claiming our attention in this case is has the Complainant a sufficient remedy at law?

This is not simply a case of temporary trespass which may be recompensed in damages, but it is a claim on the part of the Defendants for the absolute title and a continual occupation under color of right. The — —