deed being so questioned, shall within the respective times aforesaid be given to the Commissioner of Crown Lands.

2. This Act shall not apply to any deed based or purporting to be based upon a sale for taxes made prior to the first day of January, 1868.

3. Nothing in this Act contained shall interfere with the authority of the Commissioner of Crown Lands under "The Public Lands Act of 1860," to cancel the original sale, grant or location, of any such land.

SELECTIONS.

MARRIAGE BY REPUTE.

The case of *Hill* v. *Hibbit* is sure to interest the public. It is full of incident, sensational, and highly spiced and has also some interest for the lawyer, we do not mean that any new principle is enunciated or any old principle developed, but the judgment of the Lord Chancellor in respect to the validity of the marriage of Eliza Phillips and James Hay brings into strong light the elementary doctrine of the English law of marriage.

The main facts are these: Hay met Phillips in London, and they cohabited; but, as the Lord Chancellor remarked, it is clear they were not married in England. They went to Scotland, where Hay introduced Phillips as his wife, and she was treated as his wife by the members of his family. Hay went to America. Phillips followed. In America Phillips used her maiden name, as it is alleged, for the purpose of earning her living. Phillips (said the Lord Chancellor) was plainly of unsound mind, and of a family subject of insanity; she was subject to fits, and, though perfectly sane for some time, liable to fly off at any moment. She was for some years in a lunatic asylum. Hay visited England, met Harriet Hibbit, cohabited with her for one night, subsequently met her in America, and was publicly married to her. Was this a valid marriage? Or was it interdicted by the connection between Hay and Phillips?

That there was a marriage according to the Scotch law there can be no doubt, because there was no mere repute, but there was also acknowledgment. Hay introduced the woman to his family as his wife, and she was received as his wife. This would appear to settle the case. No act of the man or of the woman can have the force of a divorce. A marriage by consent cannot be dissolved by consent. Yet it is true that in penal cases, such as bigamy, the prior marriage cannot be proved by mere repute. If Eliza Phillips had remained in a sound state of mind, the Lord Chancellor intimated that the case might have had a different complexion, because she would then have countenanced the idea that she had never been married. Certainly it would be a cruel hardship for a woman who is publicly married to find that her marriage is invalid, and her offspring bastards, because the man had years before lived in Scotland with some other woman as his wife, that woman having resumed the use of her maiden name. On the other hand, it is difficult to understand how a marriage by consent, being at law a valid marriage, can be dissolved by the acts of the man or woman, or by their joint assent. Divorce is extremely easy in some American States, but divorce by consent, without the intervention of a Court of Law, has not yet been admitted anywhere. It is more difficult to establish a consensual marriage by mere repute than by repute and acknowledgment; but we apprehend that, the marriage being established, it is in law as binding and lasting as any other marriage.—*Law Journal.*

WRETCHED TRUSTEES.

If you are a trustee, and you entertain a doubt as to the title of your alleged *cestuis que trust*, what ought you to do? Our student, fresh from the study of Mr. Lewin, would answer: "Pay the money into Court under the Trustee Relief Acts." This is a good answer so far as it goes. But suppose that your doubt or difficulty turns out to be an unreasonable one, you may be ordered to pay the costs of the payment into Court. How then are you, being an unlearned person, to find out whether your doubt or difficulty rests on a sound foundation, or is a creature of the merest imagination? The student will answer: "Take counsel's opinion." That reply, which on its face is wise and prudent, may lead the unlucky trustee into worse mischief. For here is the *dictum* of Vice-Chancellor Stuart in *Gunnell* v. *Whitear*, in the current number of our Reports:—"A trustee *ought not to consult counsel as to the right of his cestuis que trust.* If he has any reasonable difficulties and doubts as to their title, he should pay the trust money into Court under the Trustee Relief Acts. He is not to consult counsel as to the title of his *cestuis que trust.*" Of course his Honour did not mean that such an act would be improper or indecorous, but that costs would not be allowed. But if the trustee is not to consult counsel, how is he to know whether his doubts are reasonable or not? We confess that this *reductio ad absurdum* fairly staggers us. The only possible solution is that, in the eye of equity, every trustee undertakes to bring to bear upon the duties of his office such an amount of legal knowledge and skill as will enable him to decide whether or no reasonable doubts do exist as to the rights of his *cestuis que trust*; and if this rule is to prevail, we think it only fair that trustees should have distinct notice thereof. Perhaps the learned Vice-Chancellor had in his mind the celebrated case of *Jenkins* v. *Betham*, 15 C.B. 168, in which the Court of Common Pleas held that a person who holds himself out as a valuer of ecclesiastical property is bound to know, and to value according to the principle laid down in *Wise* v.