

the first colony. The following year a second colony was established in Jaffa, and some years later one in Jerusalem. A few families have taken up residences in Ramle and in Nazareth and the number of this body in Palestine is now more than 1200 souls. They are under the German government, represented by the consuls, and are altogether independent of the Turkish government, except as far as the payment of certain taxes is concerned.

The present condition of these temple colonies seems to be prosperous. The members are diligent workmen, living in comfortable homes. The soil yields abundantly and the work of the various trades seems to be remunerative. A few of the colonists are really well off.

The spiritual condition is not so encouraging. The enthusiasm which once led them to abandon their native soil for Palestine's sacred ground has partly subsided. Doubts have entered many minds as to the possibility of gaining the object they once had in view. A new generation, their children, is growing up around them and their resources seem to be inadequate to the growing demands. At the outset they were inexperienced and without the superior wisdom necessary for their undertaking.

When they first came land was cheap and they could have obtained a large area at a small cost. But their leaders told them that the time would come when the natives would be happy to give them all the land they wanted without pecuniary consideration. They therefore neglected to invest in land, and commenced instead to build expensive houses on small lots. But at present land cannot be had for nothing in Palestine. The natives learned that land was valuable, and they hold it now in the vicinity of colonies at very high prices, and the colonists are not able to enlarge their possessions as fast as would be desirable.

Nor have they been able to keep themselves free from a factional spirit. The two contending elements that spring up everywhere, the spiritual and the worldly, have found representatives among the colonists, and are both contending for the supremacy. And it is only a question of time when the whole temple movement will have become a secular and political affair. The association, instead of inaugurating the Millennium, will simply have added a few acres of ground to the German Empire. And that will be the consummation of the great scheme.

Palestine needs for its redemption something more than mere human wisdom can suggest. The inhabit-

ants of that country, and particularly the Jews, need the Gospel of Jesus Christ. They need the revelations from on High and the restoration of all the ordinances and blessings which once made that country the gem of the earth. If they can receive these blessings, they will be redeemed and the way will be opened for the rebuilding of the temple on the spot once sanctified for this purpose. The "Temple Association" has performed a good preparatory work. There is no room for doubting this, but the great work itself is left to the Saints of the Most High, whose special calling it is to prepare the way for the kingdom of peace, liberty and righteousness.

#### THE COUNTY AND TITLES TO LANDS SOLD FOR TAXES.

An adjourned session of the County Court was held April 2nd, during which County Attorney Murphy rendered the following opinion regarding the title of tax sales, in the matter of the petition of Jacob E. Bamberger:

SALT LAKE CITY, Utah.

To the County Court, Salt Lake County:

Gentlemen—I submit herewith my opinion upon the question of your power to grant the petition of Jacob Bamberger (herewith enclosed) for a refunding to him of the amount paid at a sale by the county of certain land, a deed to which had passed to the probate judge, in pursuance to the provisions of the revenue act of the Territory. See sec. 2031.

Assuming the fact to be that at the time of the assessment and collection of the taxes, for non-payment of which the land was sold or attempted to be sold, the title was in the United States government, and that no steps whatever had been taken by any party to acquire title under any of the land laws of the United States, the land in question was, of course, not subject to taxation. And this being so, no title passed by virtue of the sale for the supposed delinquent taxes, nor by the deed to the probate judge; and therefore none passed to Jacob Bamberger by the county's sale, and the probate judge's deed set forth in the petition.

The deed, however, was a quit claim deed, containing no covenants of title.

Two questions, then, arise upon this petition: First—Is Salt Lake County, acting through its county court, legally compellable to refund the amount paid by the petitioner for the land in question? Second—If the county is not so compellable, has it power, nevertheless, to refund the money in recognition of any supposed moral obligation so to do?

1.—The sale of this land was ordered under the authority contained in section 187 of Section 11 of the compiled laws of 1888, authorizing county courts to sell "any land belonging to the county, no longer required for public use." Theoretically, therefore, the sale was not any part of the system of raising revenue. Where lands pass into the ownership of the county by virtue of these tax proceedings, they become as effectually the property of the county as is the court house or jail, and their future disposition is in no part of the revenue system, notwithstanding that the intention in selling them under article 187, section 11, above referred to, may have been primarily only to get into the treasury the amount of the delinquent taxes and costs.

But there is a sufficiently close analogy

between this case and cases of purchase at tax sales, where the purchaser obtains no title, to make the latter class of cases available as authorities here.

The great preponderance of authority is to the effect that where the purchaser at a tax sale obtains a bad title or no title, he cannot recover the amount of the purchase price from the selling power—the State, county or town. The State or county does not warrant the title, and if the officer does warrant the title, it does not bind the State, county or city which sells.

Logansport vs. Humphrey, 84 Ind., 167. The purchaser buys at his own risk. The rule of *caveat emptor* fully applies.

Emerson vs. County, 9 Me., 88.

Treat vs. Orono, 26 Me., 217.

Loomis vs. Los Angeles, 59 Cal., 457.

Hamilton vs. Valmet, 30 Md., 139.

People vs. Auditor-General, 30 Mich., 12.

A distinction is observed in Indiana between cases where the sale was merely "ineffectual" to pass the whole title, but was sufficient to subrogate the purchaser to a valid lien for taxes held by the State, notwithstanding irregularities in the proceedings, and a sale absolutely void—as where the land was not taxable at all. In the former case the purchaser, having his lien, could have no recovery; in the latter he could recover the amount paid.

State vs. Casteel, 110 Ind., 174.

But this decision, and all others allowing the purchaser to recover on failure of title (except one—Corbin vs. Davenport, 9 Iowa, 239), which have fallen under my observation, were controlled by the specific provisions of local statutes; we have no such statute in Utah.

It is true that most of the cases proceed upon the principle that it is the duty of the purchaser to scrutinize all the proceedings which lead up to the sale, but there can be no distinction upon principles between his duty to examine the tax proceedings and his duty to examine the question of the right to tax the land at all.

The decisions above referred to, holding that the purchaser could not recover, are merely applications to that special class of cases of the rule that a purchaser who has received no covenants for title cannot, upon the discovery of a defect in or failure of his title, recover back the purchase money, where there has been no fraud in the sale.

Rawle on covenants for title, section 321 and numerous cases cited.

Even prior misrepresentations as to the naked fact of title in the grantor is not sufficient to warrant such a recovery. All the previous negotiations of the parties are merged in the instrument of conveyance which the purchaser accepts. That instrument alone fixes their rights and liabilities.

Peabody vs. Phelps, 9 Cal., 213.

I advise you, therefore, that you are under no legal obligation to grant the prayer of the petition.

2.—But have you nevertheless a right to recognize any supposed moral obligation, and to voluntarily pay back to the purchaser the price he has paid for a supposed title he did not get?

There is no doubt of the right of a state legislature to make restitution in such cases, nor of the power of a legislature to authorize a municipality to do so and to compel municipalities to tax their citizens to create a fund to pay obligations so imposed.

But no case has fallen under my observation in which the exercise of such a power has been upheld in the absence of an express or necessarily implied legislative authorization. Salt Lake County, like all other municipal corporations, has only such powers as are expressly granted by the statutes, and such as are necessarily implied in such express grants, and such as are essential to the fulfilment of the functions for