# STATE CITIZEN'S MOVEMENT BY MR. P. A. MACPHERSON

## The Portland Independent Ticket to be Extended all Over State Politics.

### FACTION THAT CONTROLLED THE TWENTY-FIRST GENERAL ASSEMBLY AFTER STATE OFFICES

### Endorses the Multnomah Citizen's Delegation That Controlled the Last Legislature.

The Portland Telegram prints the new move under the following head lines:

New Factor in Politics.—Citizens' Movement Threatens to Bob Up Again. —Mr. MacPherson, of the Committee of Two Years Ago, Has Designs Upon the Entire State.

**The Macpherson Letter**

PORTLAND Jan. 23.—(To the Editor.)—As a member of the executive committee of the citizens' movement in Multnomah County two years ago, which resulted in the election of the entire ticket as nominated, I was brought into more or less prominence. Very recently I, as a member of that committee, have received a considerable number of inquiries from persons in Portland and in other parts of the state, making inquiries about the inauguration of such a movement during the approaching campaign, that will embrace the entire state. To reply to these inquiries briefly, and for the information of others interested, I ask a small amount of space. I would say that other gentlemen of the citizens' movement of two years ago and I are now compiling a method of campaign, which will be sent to interested parties by circular letter. It is proposed to nominate and elect the entire state ticket and the members of the Legislature from the ranks of the people, without regard to party affiliations. The control of the Legislature will insure the election of a United States Senator who is not addicted to ring rule—something new for Oregon.

It cannot be disputed that the citizens' campaign of two years ago was a success. Laws were enacted which, had they been enforced, would have made many reforms in the government of the state. The citizens—meaning men who place country above party—now propose to control the executive as well as the legislative branch of the government, so that whatever laws may be enacted shall be enforced. P. A. MACPHERSON.

The "Movement" is sprung in the Telegram, as follows: It now seems probable that an issue will enter the state political campaign that has been taken into consideration by neither the Republicans or the Democrats. This is the so-called citizen's movement that had more or less to do with the nomination and election of the Multnomah delegation in the legislature two years ago.

Partisan politicians have been aware all along that they will have to contend with a movement of some kind on the part of organized labor, and it is presumed they are prepared to meet the issue, but a revival and a threatened expansion of what is known as the citizens' movement comes somewhat in the nature of a surprise.

The first public intimation of an intention on the part of non-partisans to interfere with state policies is contained in a published letter from P. A. MacPherson, who was a member of the executive committee of the Citizens' party in Multnomah two years ago, and who was prominent in the management of the movement.

**To Cover the Whole State.**

Mr. MacPherson was asked this morning to outline the details of the proposed state movement. He was somewhat reticent and left the matter still in a vague condition. Among other things he said:

"Our object is to inaugurate a movement covering the whole state, similar to the proposition in this county two years ago, which resulted in victory. We propose to organize in every township, precinct and county, and in every city ward in the state. Our idea is to hold township and ward caucuses, which will elect delegates to county conventions. These county conventions will send delegates to a state convention in the regulation way, and the presumption is that this convention will be held soon after those of the two great political parties. The state convention will name a ticket composed of the strongest and best men in the state regardless of party affiliations, and we will obtain the best brains and integrity of both parties."

"How are you going to keep ring politicians from packing and controlling your ward and township meetings?" was asked. Mr. MacPherson evaded answering this query directly, but intimated that the old leaders had a way out of this dilemma.

**Endorse the Portland Holdovers.**

He then went on to say: "We will undoubtedly indorse candidates, nominated by the Democratic or Republican conventions, and perhaps, some on both tickets. Should the Democrats name a candidate for Governor who is above reproach, we will indorse him. Should the Republican candidate for Congress meet with our views, we will support him, and so on all the way down the line."

"We shall," said Mr. MacPherson, "pay particular attention to the Legislature. We intend to control that body, not only because much legislation of a reform nature is needed, but because we propose to elect a successor to United States Senator Simon. We have perfect confidence in the hold-over Senators from Multnomah County and will, we believe, elect the representatives."

Leaders of both the Republican and Democratic parties are inclined to smile over the proposed Citizens' movement, and predict that the approaching campaign will be fought out along strict party lines, and that there will be no fusion or coalition anywhere in the state.

## WHAT THE DECISION BY BELLINGER MEANS

Continued from Fourth Page.

This is a proceeding in involuntary bankruptcy against A. T. and F. N. Gilbert, as partners in the conduct of the banking business of Gilbert Brothers, at Salem, Or. The petitioners in the original and amended petitions are: Ida Muths, William Iwan and A. S Eppley, creditors of Gilbert Brothers in the aggregate sum of $1978. Subsequently one Loo Jim, a creditor in the sum of $500, also filed a petition praying for an order of adjudication in bankruptcy. The acts of bankruptcy relied upon by the creditors are alleged as follows: That Gilbert Brothers, being insolvent, did within four months of the filing of the original petition transfer securities by way of preference to certain creditors to the aggregate amount in the value of $7000; that subsequent to the filing of the original petition, A. T. Gilbert entered into a written stipulation in a suit then pending against Gilbert Brothers brought by or in the interest of the heirs of William Cosper, deceased, whereby it was stipulated that one Claud Gatch might be appointed receiver of said firm, and that said Gatch should convert the assets of the firm into cash for the payment of all the firm's creditors and the winding up of its business; that to this end A. T. Gilbert suffered a decree to be entered in said suit, and that he thereafter transferred the assets of the firm to the receiver. Other acts of bankruptcy were alleged in the petitions filed, but upon the hearing, these were abandoned.

It is contended that F. N. Gilbert is a partner in the business of Gilbert Brothers, and this is a question in the case, material only in the event that an act of bankruptcy is proven as alleged.

The stipulation that a receiver might be appointed, and the subsequent transfer by A. T. Gilbert, do not have the effect of a general assignment within the meaning of the bankruptcy act. This question was decided by the Circuit Court of Appeals in the Second Circuit in a recent case, in which the court says: "When the statute declares that a general assignment for the benefit of creditors is an act of bankruptcy, can it be construed to include an act which is not a general assignment? We think that it cannot, because the term has a universally understood and recognized meaning throughout the different states, and means a transfer and conveyance by a person of all his property to a named person upon a trust, which is to be worked out in some states by a court of probate and insolvency, in some states by a court of common law, and in some states by a trustee, subject only to the supervision to which any trustee is subjected. It is a deed or conveyance which the grantor makes voluntarily, or sometimes by compulsion, at the instance of a court of insolvency. A petition for the appointment of a receiver is not that proceeding which is universally recognized as an assignment, and its 'equivalency' of result, if equivalency exists, is not important. The bankruptcy statute has said that the one is an act of bankruptcy and has said nothing about the other, in direct terms; and when acts of bankruptcy are classified, as they are in the statute of 1898, it is not the province of a court to enlarge the classification because the omitted class seems to partake of the sin of the named class." In re. Empire Metallic Bedstead Co., 98 Fed. Rep. 981.

There is a much stronger case against the contention that consent to the appointment of a receiver operates as an assignment within the meaning of the bankruptcy act, than that from which the above quotation is made. The suit in which Receiver Gatch was appointed was not a friendly suit. It is not claimed that it was procured or acquiesced in by A. T. Gilbert. The bank of Bilbert Brothers had already been forced to supend by reason of a suit previously brought in the Circuit Court of the United States for this district by one of the heirs of William Cosper, claiming a liability from the bank to said heirs in the sum of $150,000. A receiver was appointed to take charge of the property and assets of the suspended bank during the pendency of the suit. The bill of complaint in that suit was dismissed for want of jurisdiction. In the meantime the administrator of the Cosper estate brought in the State Court the suit in which Gatch was appointed receiver. Both of these suits were in the same right, and hostile to the respondents. In stipulating, as he did, A. T. Gilbert acquiesced in what he could not help, and thereby saved needless expense to the estate and delay in its distribution.

To authorize an adjudication of bankruptcy, it must appear that the transfers complained of were made with intent to prefer the creditors to whom they were made. If the respondent was insolvent, and had knowledge of the fact, an intent to prefer will be conclusively presumed. There is a further presumption that the debtor knows his financial condition as to solvency, but this is a disputable presumption and if the debtor honestly believes himself to be solvent or if he establishes his want of knowledge as to his insolvency he then rebuts the presumption of an intent to prefer which arises from the fact of actual insolvency. Collier on Bankruptcy, 31. The bankruptcy act declares that a person shall be deemed insolvent within the provisions of the act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts.

It is then necessary to know whether the respondent, A. T. Gilbert, was insolvent when he made the transfers referred to, and if so, has he established his want of knowledge at the time as to his financial condition?

It is contended for the petitioner that A. T. Gilbert must be presumed insolvent because he did not in his answer make a full and complete showing to the contrary. The rule invoked is a rule of good faith. Prior to the filing of the petition in bankruptcy A. T. Gilbert had assisted the receiver in the United States Court in preparing an inventory of his assets and liabilities. That inventory appears to have been full and complete. The respondent, A. T. Gilbert, advised with the receiver as to the probable loss that would result in collecting the overdrafts of the bank. Thereafter he transferred the assets of the bank to the receiver in the State Court. Attorneys who appeared for the plaintiff in the suit in the United States Court represented the petitioner here. Substantially all that is now known, after all the testimony had been taken, and all there is to know, was then a matter of public record. These facts do not authorize a presumption of insolvency against A. T. Gilbert, and such insolvency, if it existed, must be otherwise established.

The receiver appointed in the United States Circuit Court made an inventory of the assets of Gilbert Brothers from which such assets are placed, in round numbers, at $164,000, and the liabilities at $191 000. He testifies that his estimate of assets were made "from the books of the bank, from the notes that were found in the bank and the copies that were deposited as collateral, from information obtained from A. T. Gilbert and from information wherever he could find it that he deemed reliable as to the value and condition of the property.

The principal assets of Gilbert Bros. consists of overdraits and loans and discounts, the face value of the former being $93,875, and of the latter $78,357. The condition of the bank as to solvency depends upon the estimate of the value placed upon these assets. The receiver in the United States Circuit Court valued the overdrafts at $81,922, and the loans and discounts at $65,000, a loss on the former of $11,953, and on the latter of $13,357. Mr. Conway, a man of experience in such matters, who assisted the receiver in preparing his inventory, agrees substantially in this estimate of the probable loss on overdrafts, but he estimates the loss on loans and discounts at $26,000. Since the inventory referred to was made, three-fourths in amount of the overdrafts have been collected by the State Court receiver, who testifies that the loss on this account will not exceed two, three or four thousand dollars. The loan and discount account, with the exception of some $20,000 in amount, consists of what are called piano notes. These notes are an exceptional kind of assets They are payable generally on long time in installments, and are secured by the instruments sold. Whale, a witness who has had some connection with this business, places the loss on these notes at $3000. A. T. Gilbert, in advising the receiver of the United States Circuit Court, estimated their value at $70,000, but he stated at the time that his estimate was low because the bank was in the hands of a receiver, that the notes were good and ought to pay out nearly their face value, and would do so if he was able to collect them. There is a wide descrepancy between the witnesses as to the value of the other assets of A. T Gilbert, consisting principally of real estate, so that upon the estimate of values made by the witnesses for the petitioners the liabilities of Gilbert Brothers exceed the assets by above $50,000, while upon the estimates made by the witnesses for A. T. Gilbert, his assets exceed his liabilities by above $25,000. Opinion evidence is untrustworthy at best, but this evidence has not the usual quality of expert opinion founded upon reasons which afford some basis for a judgment as to its value. The opinions in this case pro and con are mere guesses, signifying little, proving nothing. In such a case where a long and hostile inquiry has left the question of the solvency of A. T. Gilbert in doubt, what must the conclusion be as to what A. T. Gilbert himself thought of his solvency at the time the transfers complained of were made? Under the old bankruptcy act, inability to pay debts as they matured constituted insolvency. Then the matter of solvency was a simple one. Now a new test is prescribed: Does the respondent's property at a fair valuation equal his liabilities? And this is a thing about which the owner may not know, not if he himself thinks he is solvent, it is enough; and in a case like this, where others, equally capable with those who think otherwise of forming a trustworthy opinion, think the respondent solvent, it is a necessary conclusion that he thought himself so, and that he was honest in that opinion. Where the facts and circumstances permit it, the presumption must be in favor of good faith rather than the contrary.

The presumption arising from the transfer of property by an insolvent is effected by the amount of such transfer. Thus where the transfer was off all one's property, this was held to afford a violent, almost conclusive, presumption of an intent to prefer, where there were other creditors unprovided for. In re. Waite, 1 Lowell, 207, Fed. Cases, 17,044; and a like effect was given in Toof vs. Martin 13 Wal. 40 to the transfer of an insolvent "of a large part of his property." In this case the transfer was of a comparatively small part of the property of A. T. Gilbert—so small that the expediency of resorting to a bankruptcy court, rather than permit a distribution of the assets of the bank through the pending proceedings in the State Court may be doubted.

If the preferences complained of are set aside, it will add not more than one per cent to the dividends to be paid the general creditors. The difference between the face of the debts alleged to have been preferred and their pro rata without preference, distributed among the unsecured creditors, will amount to a little less than one per cent on the unsecured indebtedness, while the commissions of the referee and trustee in bankruptcy upon the estate available for general distribution, on Thielsen's estimate, will be about 1.6 per cent of the unsecured indebtedness. The accruing expenses of the receivership in the State Court will probably not equal these, and the other costs and charges that will result from the administration of the estate in a bankruptcy court, and the benefit to the unsecured creditors from such an administration, if any should result, will not be appreciable.

The petitioners, however, express a hope that the bankruptcy court may succeed in discovering other assets that have been misapplied or covered up; but what the receivers have not found and the large amount of testimony taken so far has not disclosed, is not worth considering in estimating the possible advantage to result from the exercise of jurisdiction in what is at least a doubtful case.

It is due to the petitioners, however, to state that in the petitions filed in this case certain transfers to Ladd & Bush, A. Bush, and the First National Bank of Portland, aggregating a large amount, were alleged to be preferences, but upon the hearing it was stated the petitioners had ascertained that these transfers were for a present consideration and valid, and the complaint as to them was abandoned.

Petition dismissed.


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