

Carroll County Times "Carroll's Yesteryears" Articles

Carroll's Yesteryears
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Any takers? Betting on election was no good for pair in 1884
By Joe Getty

Have you placed your bet on the presidential election yet?

At least two residents of Carroll County placed a bet on the presidential election of 1884. In that year there was a close election between Democrat Grover Cleveland and Republican James G. Blaine. Cleveland carried Carroll County (3,592 to 3,205), Maryland (96,946 to 85,748) and the nation (4,874,621 to 4,848,936) by relatively small margins.

Mr. Philip H. Babylon of Uniontown made a bet on the presidential election with Mr. James E. Smith of Westminster. Babylon favored Blaine, and Smith bet on Cleveland. We know about the bet because Mr. Smith filed suit to recover his winning "suit." The *Democratic Advocate* of January 24, 1885, provides the following description of the court case:

"Suit on an Election Bet.

In October last James E. Smith, of this city, and Philip H. Babylon, of Uniontown, made a bet on the presidential election. The terms were – if Blaine be elected Mr. Smith was to pay for a \$35 suit of clothes for Mr. Smith. Mr. Smith claiming to have won the bet brought suit before Justice P. B. Mikesell. The case came up on Tuesday, Col. Wm. P. Maulsby and D.N. Henning appearing for Mr. Smith, and H.M. Clabaugh for Mr. Babylon. The defendant and two material witnesses for the plaintiff were absent. Counsel for plaintiff submitted to writing what they proposed to prove by the absent witnesses, which was admitted as true by counsel for defendant. The case was then proceeded with, Mr. Smith testifying that Mr. Babylon had proposed the bet and that it was made in good faith; that he proposed to stake the money but that Babylon refused; and that both considered the wager as having been made, and that both of them had spoken of it to others. The admitted evidence of the absent witnesses corroborated the testimony of Mr. Smith in the main. Testifying further, Mr. Smith said he had called upon Mr. Babylon to settle the wager, and that Babylon refused. Upon cross-examination Mr. Smith said that he had a considerable number of bets on the election, the money being up on all, except for a hat, pair of shoes and the clothes wagered with Babylon, and that he had funds in bank to pay for these in the event of losing. It having been shown that the bet had been made, the law in the case was next considered. Col. Maulsby said that Section 85 Article 5 of the Revised Code was the only law he knew of on the subject, and he read it as follows: "No person shall make any bet or wager on the result of any election to take place in this state." He then contended that the law prohibited betting on elections to be held in this state, not in any other state, not in the United States. He

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spoke at some length on the object of government, the making of constitutions and laws and their construction, and of the rights and privileges of citizens.

"Mr. Clabaugh, for the defense, argued that there was no consideration either good or valuable involved in the contract, explaining what would be "good" and what would be "valuable," and claimed that neither was involved in the transaction. He also discussed the 85th Section, referred to by counsel for plaintiff, and said that a part of the presidential election was an election in the state. Mr. Clabaugh read Sections 86 and 87, and contended that there must be construed together. Col. Maulsby replied that Section 86 provided for the indictment of persons making wagers on elections in this state, and prescribed punishment, but did not think an indictment would hold against persons wagering on the result in another state. The 87th Section provided only for the forfeiture of money staked.

"The defense, however, rested their case on the ground of no legal consideration in the contract, and public policy. The judge non prossed the case.

"The plaintiff will bring suit in the Circuit Court, after Congress shall have declared the result of the presidential election."

In finding of "non prossed," the judge dismissed the case in a manner formally known as non prosecutur, because the plaintiff did not follow up his suit as he should have. A search of the Circuit Court docket does not show that this case was made to Circuit Court as described in the last paragraph.

So if you bet on the 1992 election, be forewarned with the caveat: "History repeats itself."

The Historical Society has launched a fall fundraising initiative, the Legacy Campaign, to provide an endowment for the organization. If you would like to participate in this effort, please contact the Historical Society at 848-6494.

Photo: Grover Cleveland