

[Originally published in *The Record-Courier*, Baker City, Oregon, July 9, 1981. There are photos of Virtue and Dooley, but none is known to exist for Durkee.]

Famous Local Names Cross Legal Paths:  
State of Oregon v. James W. Virtue  
by  
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Recently while researching early Baker County criminal cases in the courthouse, I ran across the 1878 case of State of Oregon vs. Virtue. The case read like a battle of place names. The map of Baker County came alive with Virtue Flat marching over the rolling, sagebrush-covered hills to the south to attack the town of Durkee, while Dooley Mountain charged down Burnt River Canyon in an assault on Durkee's western flank.



James W. Virtue

You might think this fantasy a little preposterous, but given the prominence of the men involved—James W. Virtue, John J. Dooley, and H. C. Durkee—the actual facts of the case are hardly less difficult to believe. The dusty court records, which may not have been out of their packet since filed away 103 years ago, document well this interesting case.

The criminal complaint was sworn out by H. C. Durkee on August 26, 1878, before County Judge A. B. Elmer. It contains a concise summary of the case in legalistic language probably written by County Prosecutor Luther B. Ison:

“I, H. C. Durkee, herein do hereby accuse J. W. Virtue and John J. Dooley of the crime of assault with a dangerous weapon committed as follows to wit: That the said J. W. Virtue of Baker City in Baker County, State of Oregon, in the furniture shop of this complainant on the 19<sup>th</sup> day of August, 1878, did assault this complainant with a dangerous weapon to wit a loaded pistol and that the said John J. Dooley was present at the time and place of the commission of said crime and did before and at said time and place aid and abet, encourage and incite the said J. W. Virtue the said crime to commit.”

Durkee concluded his complain by asking that Virtue and Dooley “be forthwith arrested and dealt with.”

The complaint sounds like Frank and Jesse James holding up a bank. But Virtue and Dooley were no desperados who hid out in the hills avoiding posses. In fact, Virtue used to lead posses as Baker County’s sheriff from 1866 to 1870. More information about these three men might be helpful before going further into the events behind the assault charge.



John J. Dooley

According to his obituary in the *Oregonian* (November 28, 1903), Virtue was born June 24, 1837, in County Fermanagh in Northern Ireland and immigrated to Ontario, Canada, as a youth. In 1856 he moved to Omaha, Nebraska, and then to Baker County in 1863 to seek his fortune at Auburn where gold had been discovered in late 1861. On June 4, 1866, he became the second man elected sheriff of Baker County. (Three of the five preceding sheriffs had been appointed to the position.)

Virtue’s most notable accomplishments did not come in the political arena but in business. Together with A. H. Brown, he owned the Virtue Mine east of Baker City from about 1870 until the two men sold it in about 1873 to a San Francisco company. He and several Baker City citizens bought land and platted the town of Ontario, Oregon, in 1883, supposedly named by Virtue of Ontario, Canada. For many years Virtue owned a successful bank, brokerage service, and assay office in Baker City. He is also credited with having built in about 1873 the first stone building in Baker City at the southwest corner of Front (Main) and Court Streets. The building housed his bank until it burned down on September 5, 1888.

Virtue’s house was the only residence in the middle of the block between the present location of St. Francis Cathedral and Main Street. Local educational historian Dr. James Evans, who will soon publish a book on Baker County schools, told me that in 1892 Virtue sold his house to the Sisters of St. Francis, who added a wing and used the house as a girls school. In 1903 St. Francis Academy was built on that block. Virtue’s house, after the wing was removed, was moved to 2436 Church Street, where today it is the Starlite Apartments.

In about 1867 thirty-one-year-old Virtue married eighteen-year-old Amelia Bowen, daughter of one of Baker County's first settlers, Ira B. Bowen, Sr. They had four children. In 1892, after his bank failed, Virtue moved to Portland and a while later to Josephine County, where he was also involved in mining and was elected to the Oregon legislature for a term. In 1902 he moved back to Portland, where he died on November 27, 1903.

John J. Dooley was also an ex-lawman. Dooley served as a deputy sheriff under Baker County's first sheriff, George Washington Hall. Dooley was born in Utica, New York, on March 14, 1838, according to a short biography published in 1902 in *An Illustrated History of Baker, Grant, Malheur, and Harney Counties*. After he grew up he moved to Chicago where he was an engineer for nine years on the Northwestern Railroad.

Dooley and Virtue's future father-in-law, I. B. Bowen, also an engineer, came out west together arriving in Baker County in August 1862. Dooley mined for six years at Auburn and then lived in Idaho City for a couple of years after being appointed internal revenue collector for Idaho. Around 1870 he returned to Baker County and constructed the Dooley Mountain Toll Road, which he operated for twenty years. His brother, Jere J. Dooley, was the postmaster at Bridgeport at the opposite end of the toll road.

Dooley married Phoebe Knapp in Chicago on Christmas day 1861. Their daughter, Lilah, was born on November 3, 1862, and is said to be the first white child born in Baker County. Dooley and his wife lived the rest of their long lives in Baker City. Both died in their nineties, Dooley on his birthday in 1931 at age 93, and both are buried in the old Catholic section of Mount Hope Cemetery.

I have not found much information about H. C. Durkee. In 1878 he operated a furniture shop, probably combined with a mortuary business, in Baker City. Wesley Andrews mentioned him as a member of the first volunteer fire company organized in Baker City in 1875 (*Oregon Historical Quarterly*, vol. 50, p. 85). In the same year he was elected Baker City recorder, and in 1880 he was elected Baker County coroner. H. C. Durkee is probably related to other early settlers of Baker County. The Mint Saloon on Front Street was owned by Durkee and Dill. Express Ranch became the site of the town of Durkee. When a post office was established there in 1865, ranch owner C. W. Durkee was appointed its first postmaster.

What could have caused three such upstanding Baker County citizens to become involved in gunplay in downtown Baker City? Perhaps there was something in the air that summer. During the summer of 1878 many Baker County children and some adults, including 21-year-old Laura Ebell, wife of George Ebell of Pocahtontas, died in a severe diphtheria epidemic. And in mid-July of that summer most of the farmers and ranchers of the valley fled to Baker City for safety for about ten days during the worst of the Idaho Indian War of 1878 which raged around Baker County. Baker City served as headquarters for some of General Howard's troops fresh from pursuing Chief Joseph and the Nez Perce the year before. But, as I will show later, the most likely explanation has to do with politics.

The court documents tell much of the story of what took place on August 19, 1878, and the days following the alleged assault with a dangerous weapon. A warrant issued by County Judge Elmer on August 28<sup>th</sup> tells that the sheriff, R. C. George, was directed to arrest Virtue and Dooley. On the back of the warrant is a notation by Sheriff George dated August 29 appointing E. L. Johnson as special deputy to arrest the two men. Another notation by Sheriff George and undated says that Virtue and Dooley were arrested, probably on August 30<sup>th</sup>.

The court file also includes two transcripts of testimony from separate preliminary hearings for Virtue and Dooley. Virtue's hearing took place on August 31, 1878. Among those listed as present was County Prosecutor Luther B. Ison, another well-known Baker County pioneer. He was admitted to the Oregon bar in 1876, later became an Oregon legislator, and in 1886 was elected circuit court judge. He is remembered today for the mansion he built in 1887 at the northeast corner of Resort and Washington Streets. It was recently restored as an office for Benjamin Franklin Federal Savings and Loan Association.

Others attending the hearing were defendant James W. Virtue, who served as his own attorney, complainant H. C. Durkee, accompanied by his attorney T. C. Hyde, and two witnesses, J. M. Shepherd, editor of the weekly *Bedrock Democrat*, and his brother, S. H. Shepherd.

Since the testimony before Judge Elmer tells the story better than I can, it follows in full. I have regularized some of the testimony where the court scribe occasionally made a mistake or omitted punctuation in his haste to keep up with the witnesses. Testimony begins with a statement by H. C. Durkee, apparently in response to a question put to him by Prosecutor Ison.

Durkee: I am acquainted with J. W. Virtue. I was acquainted with him on the 19<sup>th</sup> day of August last. The defendants came into my shop in Baker City. Virtue was armed with a pistol, which he drew and flourished in a threatening manner and presented it at me. I started to go into the kitchen. I live back of my shop. Defendant Virtue followed me into the kitchen and assumed the same threatening manner. Before going into the kitchen he, Virtue, remarked, "I will shoot the son of a bitch."

T. C. Hyde continued the direct examination.

Hyde: Did this defendant exhibit a weapon?

H. C. Durkee: He did. A pistol.

Hyde: Describe to the Court his manner and actions.

Durkee: He had the pistol in his hand and flourished it around. The pistol was cocked. He threatened to shoot me. He requested me to attach my signature to an article he had written.

Hyde: Did you sign it?

Durkee: I did.

Hyde: Why?

Durkee: For fear of bodily harm.

Hyde: What do you mean by bodily harm?

Durkee: Bodily injury by shooting.

Hyde: Was there anyone present, if so who, and what part did he take?

Durkee: Yes, Mr. John J. Dooley.

Virtue turned down his opportunity to cross-examine Durkee.

At this point in the transcript let me interrupt to talk about the article mentioned by Durkee. By another stroke of good luck, the file contains the original article, which Durkee claimed Virtue made him sign. Virtue drew it up in his own hand before going to Durkee's furniture store. At the top is the word "Personal," referring to the type of advertisement, followed by the title "Card of Retraction." It reads uncorrected as follows:

"In a communication to the 'Mountain Sentinel' Aug. 15, 1878, under the Signature of 'Investigator' I made assertions therein having reference to J. W. Virtue & his business, which was not 'true' but were written through a malicious vindictive & Evil purpose, without any just cause or provocation, and that I willfully misrepresented the facts, and I now cheerfully retract the same, voluntarily & without fear favor or reward."

The signature of H. C. Durkee is affixed in a different color of ink. The same ink was used to correct the spelling of the word "voluntarily," to draw two lines through "willfully," and to fill in the date "19<sup>th</sup>."

On microfilm at the Baker County Library, I located the Card of Retraction printed in the August 21, 1878, issue of the *Bedrock Democrat*, minus the word "willfully" and the misspellings. Printed immediately below the retraction is a notice signed by Durkee in which he retracts his retraction:

"My name as attached to the above article was obtained by force the party being armed at the time with a pistol, and very much excited. I being unarmed."

The court file does not contain a copy of the article in the *Mountain Sentinel*, which so inflamed Virtue. And microfilm files do not have newspapers from that period. However, I located on microfilm a letter to the editor signed "Northwesterner" published on the front page of the *Morning Oregonian* in Portland on August 16, 1878, and reprinted in the August 21<sup>st</sup> issue of the *Bedrock Democrat*. I think it is safe to assume that Durkee wrote the letter. It deals with political squabbling in Baker County during

and right after the June election. It appears from the letter that Republican Virtue opposed the nomination of *Bedrock Democrat* editor Shepherd for the office of state printer. Shepherd retaliated by editorializing against A. H. Brown, Republican candidate for state treasurer and co-owner with Virtue of the Virtue Mine. Virtue escalated the battle further by withdrawing his bank's advertising from the newspaper. In his letter to the editor, "Northwesterner" chided Virtue with, "What a spectacle. A 'bank' like ours waging war against a county newspaper!"

A check in the microfilm files confirmed that Virtue's advertisements did in fact disappear from the pages of the newspaper during the summer of 1878. I also located a short editorial comment in the July 7, 1878, issue of the newspaper announcing that Virtue had cancelled his newspaper subscription. It closed with the taunt, "And of course we have no objections to him stopping his paper."

And now back to the transcript of the preliminary hearing. T. C. Hyde examined the state's next witness, J. M. Shepherd.

J. M. Shepherd: I live in Baker City and am editor of the *Bedrock Democrat*.

Hyde: Did you have a conversation with defendant Virtue on the 19<sup>th</sup> in reference to H. C. Durkee?

Shepherd: I had a conversation with Mr. Virtue on the 19<sup>th</sup>. Defendant Virtue did not mention Mr. Durkee's name in that conversation.

Hyde: State that conversation with Mr. Virtue and what it was about.

Shepherd: On the 19<sup>th</sup> Mr. Virtue came into the office to the case where I was at work, laid a written document on the case and asked me if I would publish it. I told him I did not know until I had read it. I commenced to read the same and defendant Virtue said, "I will pay you for it. Will you publish it?" By this time I had read the paper through and told him I would publish it. He made the remark that he intended o have those things stopped in the papers or he would shoot the top of somebody's head off. Mr. Durkee's name was signed to the paper published.

Part Three [printed July 9, 1981]  
Continued from last week

Again Virtue was not interested in cross-examining the witness. S. H. Shepherd was sworn next.

Hyde: What, if any, conversation in your hearing took place in the *Bedrock Democrat* office on the 19<sup>th</sup> day of August between J. M. Shepherd and if so state what that conversation was and between whom.

S. H. Shepherd: As near as I can recollect the defendants came in together. Mr. Virtue had a paper in his hand. He came to the case where my brother J. M. Shepherd, the last witness, was working, gave him the paper and asked him if he would publish it. J.

M. Shepherd began to read it. Defendant Virtue said, "It is a communication or card of retraction in regard to a communication in the "Morning Sentinel" of July 15, in regard to my business. You publish it and I will pay for it." J. M. Shepherd told him to wait until he read it. Defendant Virtue said, "It is all right, you see it is signed by Durkee." Defendant Virtue said if he hadn't signed it that he would have shot his God damned head off. My brother then said, after he had read it, he would publish it. Defendant Virtue said, "All right I will pay for it."

At the conclusion of S. H. Shepherd's testimony, once again Virtue waived his right to cross-examination as well as his right to make a statement. Here the first transcript ends.

Two untitled documents continue the story of Virtue's hearing. In the first document, Judge Robert Eakin found there was "sufficient cause" to believe that Virtue was guilty of assault with a dangerous weapon, ordered him held to answer before the next term of the circuit court on October 7, 1878, and released him subject to bail in the amount of \$1,000. The second document, a surety agreement, showed that Virtue did not have to come up with the sum. In the agreement two Baker City merchants, Isaac Bloch and Samuel Frank, swore they would pay the state of Oregon \$1,000 if Virtue failed to appear in court.

Neither the court file nor the newspaper gives any clue as to why Dooley did not participate in the August 21, 1878, hearing. The presence of a second transcript dated September 2, 1878, and a notation on that date by Judge Elmer on the warrant dismissing the charge against Dooley, provide evidence that a separate preliminary hearing of the charge against Dooley was held on that date.

The participants in the second hearing were the same as those at the first hearing, except that Dooley is also present. The first two witnesses were the Shepherd brothers. They both testified that they had no direct knowledge of any guilty act committed by Dooley.

The state then put on its chief witness, H. C. Durkee, whose attorney, T. C. Hyde, again conducted the direct examination.

H. C. Durkee: I state to the Court that Mr. Dooley was at my place of business with Mr. Virtue on the 19<sup>th</sup> day of August last, Mr. Virtue had an article which he demanded that I should sign. Mr. Dooley remarked, "Durkee, you had better sign it."

Hyde handed to Durkee the card of retraction written by Virtue.

T. C. Hyde: Is that your signature?

Durkee: It is.

Hyde: Why did you sign it?

Durkee: Mr. Virtue was armed with a pistol and presented it. Mr. Dooley was present.

Hyde: What part did Mr. Dooley take in the conversation and affair generally between you and Mr. Virtue on August 19<sup>th</sup>?

Durkee: Mr. Dooley came with Mr. Virtue to my place of business on the 19<sup>th</sup> of August last and was present during the whole time Mr. Virtue remained on my premises. He followed Mr. Virtue into the kitchen and said, when Mr. Virtue demanded my signature to the card, "you had better sign it, Durkee, or he will shoot."

Although not an attorney, Virtue acted as counsel for Dooley and cross-examined Durkee for the defense.

Virtue: State all the conversations that occurred between yourself and defendant Dooley during the time that they were in your shop.

Durkee: During the time they were there Mr. Dooley had very little conversation with me personally until after Virtue had obtained my signature to that article. The expression, "You had better sign it, Durkee, or he will shoot" was made before I signed the document. Dooley seized the pistol as soon as Virtue drew it. He kept hold of it until Virtue put it up.

The state's case ended with Durkee's testimony. The case for the defense began with Virtue taking the stand.

Virtue: Defendant Dooley on the 19<sup>th</sup> of August last was in my office in Baker City. I asked him to take a walk with me. Dooley did not know that I had the document. Dooley did not know that I was armed. We went into Mr. H. C. Durkee's shop and I asked Durkee to sign the paper. He at first refused. I then drew my pistol. Mr. Dooley caught hold of it saying, "Jim, we must not have any shooting." He held the pistol in his hand when Durkee went into the kitchen. He was between us all the time I had the pistol in my hand. He pushed me aside when I would have followed Durkee into the kitchen saying, "You can't go in. I will go." I put up my pistol before I went in the kitchen at Dooley's request. Dooley did say that, "Jim (meaning myself) will shoot." He merely said to Durkee, "You had better sign it."

Here the transcript indicated that the court asked a question of Virtue but the question does not appear in the transcript.

Virtue: Dooley certainly prevented me from doing what I might have done. He had no knowledge whatever, where I was going, what I wished to do or that I was armed until we entered Mr. Durkee's shop and until I had presented the paper to Durkee to sign and had drawn my pistol.

The only other witness for the defense was Dooley himself. Although the transcript did not identify the questioner, I assume it was Virtue.

Virtue: What is your name and age?



Dooley: John J. Dooley. Forty years old.

Virtue: Where were you born?

Dooley: In Oneida County, New York.

Virtue: Where do you reside and how long have you resided there?

Dooley: I reside at the toll gate on Dooley's Toll Road in Baker County, Oregon. I have resided there for eight years.

Virtue: What is your business or occupation?

Dooley: I am the proprietor of the Dooley Toll Road.

Virtue: Give any explanation you may think proper of the circumstances appearing in the testimony against you and state any facts which you can think will tend to your exculpation.

Dooley: On the 19<sup>th</sup> of August I was in defendant Virtue's office in Baker City. He asked me to take a walk. I consented. I did not know where he was going until we got to Durkee's furniture store. I had no idea of any difficulty between Durkee and Virtue until I saw Virtue present a paper to Durkee and say, "You must sign that." On his refusing to sign it, Virtue pulled a pistol, and I immediately caught hold of it, my hand being between the hammer and the cap. I then said to Virtue, "There must be no shooting him." I kept hold of the pistol until Virtue consented to put it up. When I caught the pistol, Durkee passed into the kitchen. I would not let Virtue go into the kitchen alone. I went first. I said to Durkee, "If I had done an act of that kind against a friend (referring to an article published in the "Mountain Sentinel"), I would get down on my hands and knees to beg his pardon a thousand times." When I left Mr. Virtue's office in his company, I did not know where he was going or what he wanted to do. As long as there appeared any danger of a fight or collision between the parties, I stood between them and kept hold of the pistol. Virtue told me to let go of the pistol and I refused unless he would put it up which he did. I did not in any manner aid, abet or incite an assault with a dangerous weapon as charged but acted so far as I could to prevent any breach to the peace.

Dooley's testimony and also the transcript end here. In his notation on the warrant County Judge Elmer found that there was "insufficient cause to believe John J. Dooley, guilty of aiding and abetting or inciting to commit the crime of assault with a dangerous weapon." He ordered Dooley discharged.

The court records, which have told the story so well, are silent from here on. By their silence we can conclude that the prosecution of Virtue was also dropped. This is confirmed by the only further mention of the case in the *Bedrock Democrat*, a single, isolated sentence on page three of the September 16, 1878, issue announcing that the grand jury had failed to indict Virtue. "In the matter of J. W. Virtue charged with assault with a deadly weapon, the Grand Jury returned not a true bill."

In a summer when the Bannock Indians were on the rampage and many were dying of diphtheria, the grand jury must not have taken too seriously the name calling and threats between a couple of the community's leading citizens involved in what must have seemed a silly political quarrel. As we say today, "No harm, no foul."

As a footnote to this case, I think it is appropriate to mention briefly another criminal case involving an ex-sheriff and a Baker County place name. Alfred H. Huntington, sheriff of Baker County from 1898 to 1902, and his brother, J. B. Huntington, platted the town which bears their name. Six months after Huntington left office, he and a deputy were indicted for embezzling \$25,000 in county funds. A jury eventually acquitted both men.

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