# The murder of Anne Walne

# at the Joiner’s Arms, Ribchester, November 1862.

A lecture delivered by Sir Peter Openshaw,

to the Ribchester Local History Society, 26 March 2018

On the road from Ribchester to Longridge, a couple of hundred yards past the old Cross Keys public house (now Angel’s Restaurant), on the left is Setter’s Farm, formerly the Setter’s Arms.

In 1862 it was known as the Joiner’s Arms; it was the scene of a notorious and dreadful murder of the landlady Anne Walne, which caused a local and indeed national sensation; the drama was even covered by the Times of London.

### The Maps

The earliest detailed map of the village is the tithe map of 1838.

The ordnance survey map of 1845.

There was a further more detailed survey in 1897, by which time the beer-house had changed its name to the Setter’s Arms.

### Beer houses

The Joiner’s Arms was a beer house; beer houses which were then quite common; upon payment of just two guineas, anyone could set up business to brew and sell beer for consumption on the premises.

This was at a time before clean piped water was widely available. Ground water drawn from wells was often contaminated; many water borne diseases were transmitted in this way: so drinking beer, in which the germs could not live, was safer and was drunk even by quite small children.

Furthermore, the government was also concerned about the levels of drunkenness resulting from excessive gin drinking; they thought that this problem would be solved if people drank beer. The incidence of drunkenness induced by gin did indeed fall, as the government expected; it was replaced by drunkenness induced by beer, which - typically – they did not foresee. That, however, is a digression; the point is that there were many small beer houses, even in remote country areas.

The Cross Keys was, incidentally, not built until a couple of years later, in 1867.

### Anne Walne

Anne Walne was born Anne Eddlestone in Chipping in 1783.

In 1807, at Chipping parish church, she married James Walne, a widower; he was a husbandman or small-holder at Thornley, just the other side of Longridge Fell; she signed the marriage register with a cross, for she was illiterate, which was not uncommon at the time.

After some years, they took the tenancy of the beerhouse on Fleet Street Lane in Ribchester, known – as I have said - by the sign of the Joiner’s Arms.

### The small holding

Behind their beer house, they had a small-holding of 9 acres of land, on which they kept some milk cows and eked out their living by way of subsistence farming.

James Walne died in 1838; Anne continued to run the beerhouse; in 1862, then aged 79, she lived alone. Her son John lived nearby in Hothersall; her daughter also lived in the village; later she was the last tenant of Pope’s Croft farm, just a couple of hundred yards from here. A number of her descendants, or at least relatives, still live in and about the village (and indeed in Chipping).

### The Workhouse

Her only close neighbours were those in the workhouse, which had been built in 1823, as part of the Preston Union of Workhouses. In the brutal language of the time it was for ‘lunatic paupers’; not much had changed since Dicken’s had written of the Poor House in Oliver Twist set twenty odd years earlier.

The ethos was well caught by the inscription over the entrance to the Workhouse, preserved until quite recently; it is from St Paul Second Epistle to the Thessalonians, Chapter 3, verse 10: ‘This we commanded you, that if you would not work, neither shall you eat.

In 1862, the labour master there was Joseph Ward, to whom I shall return.

### Ann Walne as a miser

I return to Ann Walne; not much is known of her character but she was described at the time as being thrifty, economical and almost miserly in habit; prosecution counsel at the trial said she was eccentric and penurious. There was a widespread belief that she had hoarded and hidden a large sum of money in the house.

Furthermore, in mid-November 1862, her rent was due; she had sold a cow to provide the necessary money; no doubt, it was believed that she had hidden that as well.

### Duncan McPhail’s early visits

One of the frequent callers at the beer house was Duncan McPhail, aged 34.

He had not had a bad start in life; his father had been a Minister in the Baptist chapel in Huncoat near Padiham but he was said to have preached ‘more of Chartism than of Christ’, and had as a result been ejected from his living.

McPhail himself had numerous convictions for theft and fraud and later for perjury for which he was sentenced to be transported to Australia for 7 years but, after a few years, he gained a ‘ticket of leave’, and returned to Blackburn, where he set himself up as a traveller or hawker going round local villages in his horse and cart selling cheese, bacon and green groceries.

One of his customers was Ann Walne. During the course of these visits he came to hear the rumours of her hidden wealth.

### The last sighting

I come then to the murder. The evening of 10th November 1862 was a foul night, sleeting and even snowing. Joseph Ward, her neighbour from the workhouse, came round at about 8 o’clock, as he always did, to milk the cows and to close her shutters; he left her alive and well.

### The finding of the body

However, when he went round between 6 and 7 o’clock the following morning, again as he always did, he was surprised to see no light in the house; the shutters remained closed and the house was unexpectedly silent; he became alarmed when he encountered some obstruction inside the front door, which prevented him from opening it. He went round the back of the house and found that a window frame, had been prised out of the wall.

Understandably afraid to enter alone, he went to near-by farmhouse to rouse another neighbour, William Pye, who lived at Ward Green, where the car park for Angels now is; together they went back to the house; they climbed in through the open window; they shouted to her but having no reply, they went upstairs into her bedroom where they saw her; she had been tied to the bed frame and was all bloody about her head; she was cold and was obviously long dead. One of them went to tell her son; the other went to the police house in the village to alert Sergeant Whiteside. He later described the scene to the Coroner: Anne Walne was lying on her back; her wrists were tied to the bed. The bedclothes were all tangled and thrown about. Her face was covered by a woollen shawl, presumably to prevent her from describing – or even recognising – her assailants; two handkerchiefs were tied tightly around her mouth, holding in place a gag, to prevent her from shouting out.

The sergeant observed that her clock had stopped at 17 minutes past 2; he thought that one of the intruders might have searched inside the case to see if her money was hidden there and had disturbed the pendulum.

He returned to the village and telegraphed to the main police stations in Preston and Blackburn, for help - there was indeed telegraph in 1862; the superintendents from both towns rode immediately to the scene.

### The post mortem

Dr Patchett, the village physician, chanced to pass by; he was therefore the first to examine the body.

The post mortem examination was conducted by Dr William Martland, a surgeon from Blackburn. He found that she had sustained at least two heavy blows to the face, one had caused a lacerated wound, and a swelling to her eye, another blow had broken her nose. These blows may have rendered her unconscious but death resulted from suffocation from the gag which had been forced into her mouth, and held in place by a shawl wound round her head.

The inquest was opened at the Black Bull; the Coroner released the body.

### Funeral

Ann Walne was buried at Chipping, beside her husband; her grave, probably marked only with a wooden cross, cannot now be traced.

### The sale of her property

Very shortly after her death, her family organised a sale of her goods and chattels at the beer house; this was a very usual procedure after death; rather impertinently, as it would seem in the light of later events, Duncan McPhail attended the sale and presented her son John with what he said was an outstanding bill for bread and cheese; John was surprised at this lack of taste, but said it was not worth challenging such a trifling sum and paid up.

### The early police investigation

In seeking to identify those responsible, the police did not have much to go on.

This was long before the science of fingerprints was developed. In the 1850s, Sir William Herschel in India had started requiring native labourers, who could not write, to attest deeds by applying fingerprints but the technique was not used to solve crime in this country until 1905.

It was more than a 120 years before DNA was used.

Supt. McNab had observed that in the snow that there were the footprints of four different pairs of boots but the marks were indistinct.

### The arrest of Thomas Davis

The proximity of the Workhouse gave rise to the obvious possibility that one of the inmates might be responsible. Sgt Whiteside was told by one of the inmates, James Whalley, who was whitewashing the outside of the building, that that another of the inmates, Thomas Davis, had visited the beer house the day before seeking work; Mrs Walne had sent him away with some uncivil words; the sergeant conjectured that he might have borne her a grudge.

When Sgt Whiteside went to the workhouse, another resident, Hugh Harrison*,* came forward to give further information. Harrison had a long criminal record; he said – as it later transpired quite untruthfully - that Davis had often spoken of Mrs Walne and her money, which he said she had hidden in her clock; the fact that she did so was, of course, now common gossip following her murder. He said – again quite untruthfully - that Davis had told him that he intended to rob her.

Davis, who was a pauper confined to the workhouse, was described at the time as ‘a careless, idle fellow, of a somewhat suspicious character’.

The sergeant also thought that Davis’s clogs might have matched the footprints left behind the beer house. On these frankly insubstantial grounds, Davis was arrested and held in custody in the lock-up in the old police house, in the village.

He does not seem to have been formally interviewed, but it is plain that from the beginning until his eventual release, he vigorously protested his innocence.

### Inquest

The inquest was adjourned several times, as further information came in.

### The reward and Thomas Bowling

Having no other leads, and perhaps realising the weakness of the evidence against the wretched Davis, the police offered a reward of £100 to anyone giving information leading to the arrest and conviction of those responsible; this was a huge sum of money (perhaps £100,000 today); the reward was widely advertised.

The notice caught the attention of Thomas Bowling, alias Chorley Tom, from Samlesbury, who claimed to be a game-keeper, but he was in fact well known as a poacher. He had many convictions for a series of low-grade offences. He had in the past been acquitted at the Assizes of maliciously shooting another man. He went to the police at Blackburn to give this information and to claim the reward.

He said that he had visited Duncan McPhail at his house in Blackburn and during the course of their conversation, McPhail had admitted - boasted even - that he had gone to the beer house with others whom he named: Daniel Carr, Benjamin Hartley, George Woods, and his brother William Woods. Quite why Duncan McPhail should have volunteered this highly damaging information gratuitously to him, Thomas Bowling was unable to explain.

The police never really believed Bowling’s story in its entirety, believing – as did many others - that Bowling himself had played some active part in the enterprise; and possibly suspecting that his real motivation in implicating the others was spite that he had not been paid for his part. On the basis of what he said, the others were all arrested and brought before the magistrate at Blackburn.

When later, at the trial, Bowling was cross examined on the basis that he had told a pack of lies in order to claim the reward; he piously replied that he came forward only so that Tom Davies, whom he knew to be innocent might be speedily released.

Davis, who had been kept in custody the while, was then taken before Preston magistrates court and released. He was aggrieved that he had been held so long without proper cause and demanded compensation which was denied on the basis that there had been reasonable grounds to suspect him in the first place; with no legal aid, he could not pursue the claim.

I come then to the real breakthrough in the case.

### The evidence of Benjamin Hartley

One of those arrested as a result of Tom Bowling’s statement was Benjamin Hartley; he was aged 53, a steam loom weaver by occupation; he asked to speak to the police; he told the police that if the prosecution offered no evidence against him, he would give evidence against the others, as an approver.

An approver was a person who had himself participated in a crime but who agreed to give evidence against his accomplices, in return for his freedom. This was – and still is - sometimes called turning Queen’s Evidence. The advantages to the public in this system was that in those days, unless there were eyewitnesses, there was very often no evidence against offenders and since frequently the only eye witnesses were accomplices, convictions could only be secured against some of those responsible by calling others as accomplices, or approvers.

There are obvious dangers in such evidence for there is a temptation for such a person to exonerate himself by down-playing his role and to implicate the others by blaming them. Therefore it had long been the practice of the judges to direct juries not to act upon such evidence unless it was supported – corroborated as the lawyers say - by some other evidence. Juries were – and indeed still are – cautious before acting on the evidence of informants, who had so much to gain by casting the blame onto others.

Hartley dressed up what he had to say: he said that he wanted to make a clean breast of it; he said that he had had no rest in his mind since the deed was done: nearly all accomplices say that.

This is the story that Hartley told, first to the police, then to the Inquest, then to the magistrates at Blackburn, who committed them for trial and then at the trial at Liverpool Assizes.

He said that McPhail came to his house one night and that he was – as he put it – ‘fast for money’; he told him of Anne Walne’s hidden wealth; that she had recently sold a cow so that she could pay the rent and McPhail asked him to join him to burgle the place. He said that their plan had only been to break in and to steal; one can understand that McPhail might have been unwilling to do the deed alone, since if Mrs Walne was disturbed, she would recognise him but it may be thought significant and sinister that he recruited no less than four others.

Furthermore, Hartley said, Carr and Woods armed themselves with crowbars and canes, as he called them but these were heavy sticks – almost cudgels - weighed with lead; McPhail had a pistol and a dark lantern, which had a shutter to dowse the light. It seems to me that from the fact that he went mob-handed with three others, who were armed, the inference can readily be drawn that they envisaged using serious violence against her, if the need arose, either to overcome her resistance or to compel her to reveal where she had hidden the money, or to ensure that she did not survive to identify McPhail as one of her assailants. Hartley piously claimed that he was himself unarmed.

They had two false starts; once they had called it off because of the bright moon-light and the second time because Woods turned up drunk.

They then resolved to go the next night, 10 November, come what may. They walked from Blackburn to Ribchester; that is all of 7 miles, but people did walk much longer distances then. He described the journey, past landmarks which are familiar even today: from Salford Bridge, past the Bull’s Head, at Ramsgreave; through Salesbury village, past the Bonny Inn; down past Oak’s Bar and down Barker Brow.

Hartley said that they had met an old man there and exchanged pleasantries about the foulness of the night; it had been snowing.

They continued over Ribchester bridge and into the village. He said that McPhail knew a way across the fields and a barn where they could shelter from the storm. So they forced the staple of the barn door with a crowbar and hid, fortifying themselves with rum.

At about 2 o’clock in the morning, when they were confident that the old lady would be in bed, they went across the fields to the back of the house; they lay for some time in the barn opposite then they went to the back of the house, forced the window and climbed in.

He said that McPhail and Woods searched downstairs – ‘plundered’ was the word he used – one of them looked inside the clock, stopping the pendulum as he did so, at 17 minutes past 2, as Sgt Whiteside had observed; meanwhile, he and Daniel Carr went upstairs into her bedroom.

His accounts of what happened inside varied slightly but he said that Mrs Walne woke up, saw them and screamed; as he (Hartley) held her down, Carr struck at her with his loaded cane, to quieten her, but in the process hit Hartley and injuring his hand; he claimed that he cried out: ‘Oh dear, what art thou for’; in the circumstances, this seems a rather improbable imprecation. After his arrest, the police surgeon examined his hand and he did indeed have a swelling to his hand, as if caused by a blow.

Carr’s next blow hit her on the head; she shouted out that he had killed her.

On Hartley’s version, having heard the commotion, George Woods came upstairs, and despite her obvious injuries, he told them to tie her to the bedstead, which they did. He asked her where the money was, but according to Hartley she did not say. According to him, Woods later said he had found the money but he did not know where he found it, or indeed how he found it. They then left the house.

Later on the way to Preston, Woods said he had found 15 gold sovereigns and another £3 in silver; they shared out the spoils; Hartley said that he received £4 10s 6d. The money had been wrapped in a piece of flannel.

They walked to Preston, on the way, they threw away their canes and a crow bar that they had used to prise open the window, and the flannel in which the money had been wrapped.

In Preston they separated but he and Carr went to the station where they caught a train back to Blackburn.

In his evidence to the magistrates, he did not mention William Woods at all, who was discharged by the magistrates ‘without a stain on his character’, as they put it.

Hartley then showed the police where they had thrown away the crowbar and the canes, which were recovered, which supported his story.

He took the police to the barn where they had waited; this was known at the time as Duxbury’s Barn, because it was occupied by William Duxbury. The only William Duxbury in the 1861 Census farmed at Lower Alston; at the trial he described the barn as being ‘about half a mile from Ribchester and 100 yards from the highway, across the fields’. It is difficult now to determine where he meant.

Superintendent McNabb noticed that the staple from the padlock had been forced, just as Hartley had said. Moreover he saw fresh footprints in the mud on the floor and since there was then no scenes of crime photography – rather ingeniously – he put slates over the marks to protect them and engaged an ornamental moulder from Preston, Joseph Morcello, to take plaster impressions of the marks. He then compared these against the boots recovered from the prisoners. This was at a time when there were no mass produced trainers; everyone’s boots were made individually by a cobbler, who would have his own system for securing the hob-nails and clinker on the soles. Using a pair of dividers, he suggested that there was a striking similarity in the peculiar pattern of nails on boots worn by Carr and the casts made from footprints found in the barn; he suggested that there was no doubt they were the same.

Furthermore, a discarded spirits bottle was found abandoned nearby, providing further confirmation of what Hartley had said.

### The inquisition

In those days the verdict of the jury founded an Inquisition; I found it in the National Archives at Kew.

The vital extract reads thus: ‘That Duncan McPhail, Daniel Carr, George Woods and Benjamin Hartley … not having the fear of God before their eyes but being moved and seduced by the instigation of the Devil … with force and arms … did … feloniously, wilfully and out of their malice aforethought kill and murder Anne Walne.

### The charge of murder

Upon this evidence, they were all sent for trial to the next Lancashire Assizes in Liverpool upon the capital charge of wilful murder.

As they were led through the streets to the station to be taken to Kirkdale Prison in Liverpool, they were severely abused, and indeed threatened by a large crowd, who taunted them with ‘hooting and execrations’.

### Press comment on the defendants

In those days the press were very free with their comments about the defendants and indeed about the strength of the evidence. Indeed, it was not until after the reporting of the Moors murder case in the 1960s that press restrictions were placed pre-trial.

The Blackburn Standard reported that of Ann Walne that ‘all her supplications failed, for she was in the hands of a merciless and vagabond crew’; they were glad that ‘the inhuman savages who so foully murdered an unoffending old lady are in a fair way to being brought to justice’.

I have spoken of McPhail’s background; the Preston Chronicle said McPhail himself had a ‘bad character’, which - as they put it - did not excite public sympathy; there was, they wrote, something ‘particularly sinister’ in his appearance. He Blackburn Chronicle went further, it wrote that he ‘bore a bad character, plagued with dishonest propensities’.

Daniel Carr, was aged 35; he had a previous conviction for manslaughter and had served four years for a burglary in Longridge. The reports said that ‘his countenance had the harassed and vitiated look of a hard and badly used life’.

Woods aged 45, on the other hand was described as a well-made man, a joiner by trade. He has served as a soldier; he had fought in the Crimean War; he was present at the siege of Sebastopol; he had then been posted to India, where he saw active service in suppressing the Mutiny; on discharge his conduct was said to be ‘straightforward and honourable’; his position had always attracted some local sympathy, certainly in comparison with McPhail and Carr.

### The Assize system

I come then to the trial. Then, as now, High Court judges travelled out from London to try serious criminal cases. The trial judge appointed was Mr Baron Martin.

You see here the youthful judge, in an image from the National Portrait Gallery.

Here you see him wearied by the strains of office; this I found in an album in the library of The Middle Temple.

The trial took place in St. George’s Hall, in Liverpool; which still stands, indeed it served as the main criminal court in Liverpool until thirty years ago; Caroline and I appeared there many times.

The prosecution was conducted by William Higgins QC, later Recorder of Preston and Treasurer of the Middle Temple.

Although there was no system of legal aid, the **Trials for Felony Act 1836 allowed defendant** representation by counsel, who by convention would act gratuitously in such a case. In fact those who acted for the defendants were highly competent.

### The death of Daniel Carr

So I come to the trial, which was on 30 March 1863.

The first sensation of the trial was the unexpected news that when the warders had gone to collect Daniel Carr, to take him to court, they found him dead in his cell. Contrary to popular opinion at the time, he had not, it seems, killed himself but he died of natural causes, later certified by the Coroner as being asthma, disease of the heart and depression of mind and body; Victorian prisons were notoriously unhealthy places.

His death made no difference to the trial of McPhail and Woods, which proceeded.

### The trial

In 1862, domestic burglary was a felony and anyone who knowingly joined together with others to commit a felony, which resulted in the death of the householder was thereby guilty of murder, whether they struck the fatal blow or not. Thus anyone who joined in the felony of burglary was equally responsible for the result. Therefore, there were two charges laid against them the felonious burglary of Mrs Walne’s dwelling house and her murder.

The indictment charged that they ‘… feloniously wilfully and of their malice aforethought did kill and murder Anne Walne’.

A further indictment charged them with burglary in that : ‘ in the night … in the township of Ribchester … feloniously and burglariously did break and enter the dwelling house of Anne Walne … with intent to steal … certain money to wit the sum of eighteen pounds and one piece of flannel and six yards of other flannel.

### The trial

The jury heard from Mr Ward, who saw Mrs Walne the night before and who found her the next day, from Sgt. Whiteside and from Dr Martland, the surgeon who performed the post mortem.

The principle witnesses for the prosecution were Benjamin Hartley, the approver, whose evidence I have already described. He was cross examined upon the basis that Ann Walne was alive when the others left the bedroom, but he (Hartley) had gone back on his own to finish her off, without the knowledge or consent of the others - which he denied.

They also heard from Thomas Bowling, who repeated his story. He was another man who was lucky not to be in the dock himself.

### Support for Hartley’s story

They heard how that evidence was confirmed in various respects.

I have spoken of the foot prints in the barn.

Hartley had said that going down Barker Brow, they had met a man with whom they exchanged some casual remark about the weather. Robert Jackson, a farmer from Clayton-le-Dale confirmed that he had had such a conversation with a man who was accompanied by three others.

Joseph Molyneux, a weaver from Ribchester, said that he had been on his way to Preston at 3 o'clock in the morning; he had seen four sets of footprints in the snow. That was at least consistent with Hartley’s story, even though it did not incriminate any defendant in any material particular.

I have mentioned already the recovery of the crowbar and the weighted cudgels.

A small boy from Grimsargh produced a piece of flannel which he had found by the road.

William Massey the Head Porter at Preston station said that two men had boarded the early train to Blackburn that morning. He identified one of them as being Hartley, which further supported his story.

Various other people came forward to say that all the defendants had more money that day than they had before, they were more free with the drink they bought and Woods even paid off an outstanding debt.

All these details tended to confirm Hartley’s story, at least to confirm that he had been there.

### The prisoners could not give evidence

One feature of the trial which may seem strange to us, is that until the passing of the Criminal Evidence Act in 1898, prisoners could not give evidence on their own behalf.

The justification for this peculiar rule seems to have been that since most persons charged with serious crimes were believed to be guilty, any evidence they gave protesting of their innocence was likely to be untruthful; it was all very well to hang them for murder but it was not a kindness to them to allow them to commit perjury thereby further imperilling their immortal souls.

A slightly more respectable argument was again predicated upon the belief that most defendants were guilty; therefore, if they gave evidence they were highly likely to prove their own guilt, thereby weakening the fundamental principle that it was for the prosecution to prove the defendant’s guilt and not for them to prove their innocence.

All this changed in 1898, when what was called the cruel kindness of the new Criminal Evidence Act allowed defendants to give evidence, and to be cross-examined. In a cut throat defence, where each participant in a joint offence seeks to blame the other, juries usually decide that they were all in it together, which is indeed often the truth, and tend to convict everyone.

However, the fact is that in 1862 defendants could not give evidence on the own behalf and therefore they did not do so and the trial moved on to the closing speeches for the defence.

There was therefore, no evidence called by the defendants.

### Closing speeches

Mr Higgins QC counsel for the prosecution made a short closing speech, suggesting that the evidence provided clear proof of the guilt of both prisoners, who had joined in the enterprise to burgle, and since death resulted directly from the burglary, both were answerable for the consequences.

Mr Ernest Jones, counsel on behalf of McPhail said that the case against him rested on the evidence of two inherently unreliable witnesses: Hartley and Bowling. Would McPhail, who had his own business, commit murder for a pittance of £4 10s and 6d., he asked rhetorically. And even if McPhail had been there, he submitted that he may have intended a burglary only; there was no support at all for what Hartley said had happened at the house; the murder he suggested was – an act of ‘casual brutality and ferocity’ which was not a part of the original plan, which McPhail did not intend and for which he was not responsible or answerable, which should result in his acquittal.

Mr Pope on behalf of Woods principally relied upon the good character; it was, he submitted, rare indeed for a man to start a criminal career by committing murder. Was it right, he asked rhetorically, that someone who had faced death from cannon fire in the Crimea at the Alma and at Inkerman should face the ignominious and disgraceful death which would surely follow from a verdict of guilty.

At the beginning of the trial reporters observed that McPhail seemed firm; one report said he was ‘determined and resolute’and Woods tremulous but as the trial proceeded, McPhail showed signs of nervousness and even prostration.

### The summing up

The judge summed up. There was no doubt, he said, that a most barbarous murder had been committed.

He then reviewed the evidence; he was scathing in his criticism of Thomas Bowling. No one, he said, could have heard his evidence without feeling disgust and detestation. He advised them to consider his evidence with much circumspection and suspicion.

However, he asked them anxiously to consider the evidence of Benjamin Hartley; he reminded them that they should look for support but reminded them that in some particulars what he said was supported by other evidence.

### The verdict and sentence

The jury were out for an hour; they asked a question but did not retire again, they had a further short discussion in the hushed court; then with what was described as a ‘dejected and sorrowful countenance’, the foreman of the jury pronounced verdicts of guilty upon both men. They did however add a recommendation of mercy.

Juries often added such riders, perhaps thinking that if the prisoners were executed, it would not be upon their consciences that the sentence was carried out.

Alternatively, they may have thought, perhaps with justification, that the dead man Daniel Carr and maybe Hartley and Bowling, were as responsible or even more responsible than the two men convicted.

The crier called for silence, which – as the reports have it - ‘created a great effect upon the bystanders’.

The defendants were asked if there was any reason why sentence should not be passed upon them according to law; they did not.

Mr Baron Martin then passed sentence. He said that they had been convicted of a most dreadful and barbarous murder, upon what he described as the most conclusive evidence. He said that he would forward the recommendation of mercy but he held out no hope that it would be complied with. Whereupon, with due solemnity, he placed the black cap upon his head and passed sentence of death.

Newspaper reports say that the turnkeys had to support McPhail to prevent him from falling to the ground.

The indictment to which I referred earlier is endorsed in handwriting at the bottom:

‘Liverpool Spring Assizes 1863.

Daniel Carr died in Gaol before trial.

Duncan MacPhail Tried and [found] Guilty

George Woods tried and [found] Guilty

To be severally hanged by the Neck until they be dead and their bodies to be buried within the precincts of the prison in which they shall respectively be last confined after their respective convictions.

The trial had taken fully ten hours, which was very long by the standards of the day.

The prisoners were taken back to Kirkdale prison, to be kept in the condemned cell pending execution of the sentence of the court.

### Hartley’s return

The next day, the prosecution formally offered no evidence against Hartley and he was acquitted.

However, when he returned to his house in Pearson Street in Blackburn; it had been daubed with graffiti to the effect that this was the house of Hartley the murderer. A hostile crowd had gathered outside; he was greeted with ‘unmistakable manifestations of abhorrence’. He and his wife immediately left the town, never to return. It was thought at the time that they emigrated.

### The statement of McPhail

I have said persons could not give evidence on their own behalf, but before the trial McPhail had in fact made a statement about the case which, because he could not give evidence, was not admissible at the trial. The statement was however was circulated on his behalf after the trial in an attempt to persuaded the Home Secretary that he should be reprieved.

He said that the whole enterprise had been devised by Thomas Bowling. He claimed that he had only gone along with the others because he was pressed to do so but he never contemplated - still less did he intend - violence towards Mrs Walne; he claimed that he was not armed; he had exhorted the others not to use any violence and after the event he protested at the violence that had been used and had not himself laid a finger upon her. The real blame lay entirely upon the others.

In like fashion Woods also issued a statement blaming McPhail for such violence as had been used.

### No appeal

There was no appeal for the simple reason that until the Court of Criminal Appeal was established by statute in 1907, there was no system of criminal appeals, except on difficult and unusual points of law, none of which arose in this case.

Even if there had been a right of appeals, it is difficult to see that there would have been any grounds; the jury had to decide if they believed Benjamin Hartley when he said that the two defendants had participated in the murder, since there was abundant evidence from which they could so decide, the convictions were safe and the absence of an appeal did not in this instance cause any injustice.

So the effort and energy of those assisting the defendants was to seek a reprieve.

### The attempts to seek a reprieve

There were separate petitions raised to save both men. Woods attracted rather more sympathy than McPhail, but the Home Secretary, Sir George Grey, was unmoved.; he wrote that he could ‘see no grounds on which to advise Her Majesty to interfere with the due course of the law’.

### The execution

In 1863, executions were carried out in public. This was already a topic of considerable public debate.

Hogarth who had been to Tyburn to see a public execution in described the ‘hideous, dreadful and revolting scene’.

Charles Dickens had witnessed a double hanging of husband and wife after which he wrote a famous letter to the Editor of the Times to describe his disgust. It was, he wrote, a ‘gathering of thieves, prostitutes, ruffians and vagabonds who had flocked, exhibiting every variety of offence and foul behaviour, who were ‘inexpressibly odious in their brutal mirth and callousness’. He was, he said, ‘appalled at the ghastly scene’.

The execution of McPhail and Woods was set for 12 noon on Saturday 25 April. William Calcroft was appointed to do the deed; he was a prolific executioner; who plied his trade for 45 years from 1829 – 1874; he is said to have executed 450 people. By 1863, he had become ‘surly and sinister looking’ and was notoriously incompetent.

The scaffold was erected just outside the prison. During the morning, the crowd began to gather. Over 1000 people made the excursion from Blackburn, on special trains: the ‘greater part of these excursionists were well dressed’. ‘ome earnestly preached of the sinful character of men, urging ‘repentance and flight from the wrath to come’. Others – and I quote from the reports: ‘evidently belonged to the lower orders of society’; ‘the behaviour of some of the younger men was anything but creditable: the foul expressions used and the levity displayed were perfectly disgraceful’. Later came ‘streams of working men, dirty and ragged women and bare-headed and bare footed children, to witness the revolting and demeaning spectacle’.

In all there were upwards of 30,000 spectators, controlled by a detail of police commanded by a superintendent, 10 inspectors and 100 constables.

The execution itself was over a few minutes: the prisoners came out from a gate in the prison, were hooded, pinioned and the deed was done; the crowd watched in silence and dispersed without disorder. The executed felons were, according to the practice of the time buried in quicklime within the confines of the prison.

### The Royal Commission

The following year, 1864, the Grand Jury for another Lancashire Assizes, petitioned the Home Office for the importance and desirability of changing what they called the pernicious and demoralising effect which public executions have upon the large numbers of people who congregate to witness them. Capital punishment, they observed, is intended as a preventative of crime, but so far as from achieving that end, it positively increases crime. So they submitted that to end executions in public would end a great scandal.

Just two years later the judge who had tried the murderers of Anne Walne, Mr Baron Martin presided over the trial of the first railway murder, Franz Muller, who had killed a passenger in a railway carriage. Over 50,000 attended his public execution outside Newgate prison, which was accompanied by scenes of serious drunkenness and disorder.

This led to a Royal Commission on Capital Punishment, before which the judge gave evidence.

He was asked for his opinion on the value of retaining capital punishment as a deterrent; he said that since it very seldom occurs that any person in the middle class of life is indicted for murder, before forming a judgment upon the efficacy of capital punishment it was necessary to have recourse to persons who are well acquainted with persons in the lower classes, which he was not. But, he did not doubt that taking away the life of an offender must create a great deterrent. He warmed to the theme: ‘with respect to the lower classes … it must be a terror to them that in the event of their committing murder they will be punished with death and by a public execution’.

He was asked if juries sometimes hesitated to convict of murder if they knew that the punishment was death: ‘I have never had the slightest difficulty in getting juries to find the proper verdict’, he confidently said.

### The abolition of public executions

But by this time public opinion strongly favoured executions being conducted in private within the confines of the prison; the Royal commission so recommended and public executions were abolished in 1868.

### Footnote

So that is the story; it is of continuing local interest, bear witness the numbers of you who have turned out tonight; it illustrates a number of interesting social conditions and trends; nationally it is a footnote to history; which I mean literally: [show slide of the footnote to the report of the Royal Commission].