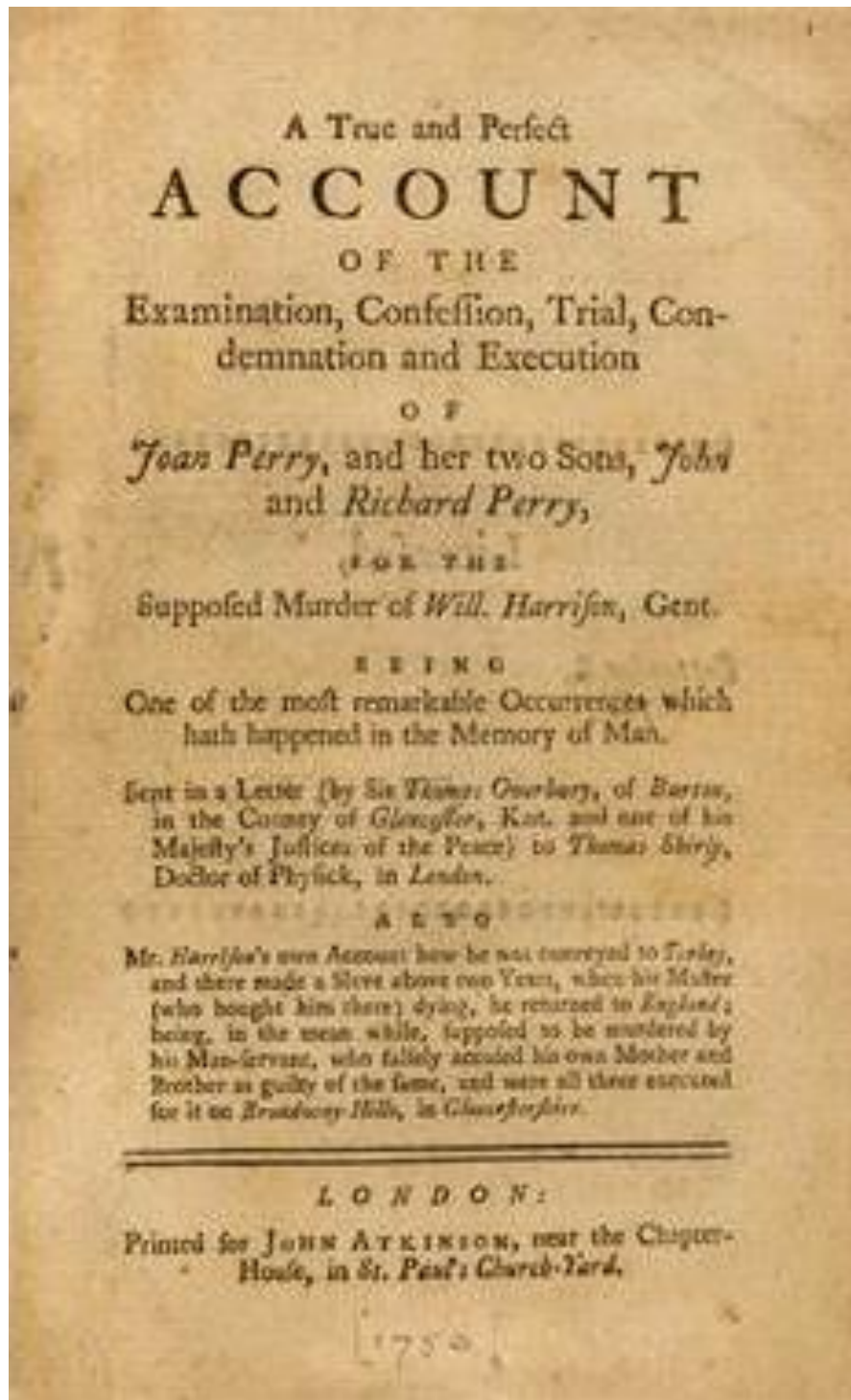


What is the most significant weakness in the 17th century justice system in England that was highlighted by the case of the Campden Wonder?

Extended Project Qualification



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Introduction

The justice system nowadays is very effective at carrying out a fair trial, it will convict those who are guilty and absolve those who are not. This wasn't the case in 17th century England as they lacked many of the resources available to the judicial process nowadays like forensics or CCTV. This underdeveloped system with many weaknesses ultimately meant that trials would not be so fair during that period and would lead to many miscarriages of justice. The case which stood out to me which greatly exposed some of the weaknesses was the Campden Wonder, this curious case is widely known as one of the largest miscarriages of justice that the early modern justice system was responsible for and raised many questions on the state of the justice system at the time. For the purpose of this report, it is important to have a complete understanding of the sequence of events in the case to fully realise wherein the weaknesses lie (see Appendix A). To help portray the events in the case I have included a map which resembles what Chipping Campden most likely looked like at the time and the areas referred to in the story are labelled on the map (see Appendix B).

A full understanding of the events contained in the case can help to realise the extreme miscarriage of justice that had taken place, and the reasons for why this happened can be seen as clear weaknesses in the justice system. Now it is clear the purpose of this report is to investigate which of these weaknesses was the most significant, however what is meant by significant within the confines of this report must be defined. Significant in this question would refer to the accountability of the weakness, which of this weakness played the biggest role in causing the wrongful execution of the Perrys and that weakness with the biggest role and most part to play in causing the execution can be seen as the most significant. The first weakness in the justice system was the poor judgement of the judicial officials in the case which concerns the magistrate Sir Thomas Overbury and the judge at the second assizes Sir Robert Hyde. Poor judgement in this case can be defined as believing Perry's testimony without fully analysing all the evidence and acting with bias in their role. A common theme in 17th century England was the influence of religion in the form of Christianity, with regards to the justice system it is another weakness that was highlighted by the case as Christianity spawned a large prejudice and superstition against witchcraft which seeped into the justice system and may have had a part to play in the wrongful execution of the Perrys. The justice system had many general rules present that when adhered to would help create a fair trial and in this case two of those rules were the Corpus Delicti rule which stated that there must be a body for a murder, as well as the Hearsay rule which prohibited the use of confessions gained outside of court. However, in the case of the Campden Wonder the disregard for these rules was a clear weakness in the system. All these weaknesses were present in the system, but the poor judgement of the judicial officials was fundamentally the most significant weakness in the system. Upon investigation of the proceedings of the case the poor judgement of these officials is very evident in multiple instances and is a product of the corrupt state of the system at the time as judicial officials were commonly unqualified as they gained their position due to wealth or nepotism. This was a huge weakness in the system at the time as it meant that the system which seemed strong in theory was ultimately weak when put into practice because the judgement of those representing it was so poor.

First Significant Weakness – Poor Judgement of Judicial Officials in The Justice System

The Justice System at the time consisted of Justices of the Peace who were magistrates that acted as the 'agency of police control' (McVicker, 1936, p.387) for the local area they lived in, therefore in the case of Overbury he was the sole policing power in Campden and the surrounding area. One can assume he would thus be able to solve the crimes in the area and keep peace as this would be performing his duty adequately. Yet, in this case it is clear to see Overbury's poor judgement and substandard performance as magistrate. Lord Maugham (1959) explains how 'if he had possessed of moderate intelligence he should've discovered the fact'(Maugham, 1959, p.85) this fact being the evident flaws in John Perry's testimony. Maugham's statement can be supported by evidence clear in the events of the case, the instances being John Perry's claim of his brother's ribbon being the murder weapon; Overbury should have questioned why this information was not volunteered earlier in his testimony. The same goes when Overbury raised the robbery from the year before which John only then confesses was him and his brother. In these two instances Maugham is correct in his criticism of Overbury with his failure to see John's tendency to volunteer information only when the opportunity was given which should have been a clear indication of the unreliability of his testimony. This may highlight a further problem within the justice system as during the time the Justices of the Peace were selected by the Kings Privy Council so therefore were selected on their social status and wealth with a requirement of 'lands to a value of £20 per year' (McVicker, 1936, p.392). This shows the further structural weakness in the system with the presence of corruption as many men that were selected to be Justices of the Peace were not qualified and therefore would obviously perform poorly when presented with judicial matters. This was evidently the case for Overbury with his poor judgement highlighting the significant weakness in the system that existed within the quality of its judicial officials. Despite this, it is also stated that Justices of the Peace should be somewhat 'learned in the law' (McVicker, 1936, p.392) so the selection may not have been wholly based on social status. To this end Wilson displays how Overbury 'wasn't entirely satisfied with John Perrys story'(Wilson, 2010, p.9) which she argues gives some credence to his judgement not being as poor as Lord Maugham (1959) would suggest in his notes, but ultimately the evidence is overwhelmingly in the favour of Maugham's suggestion that Overbury was a poor magistrate and that this was a significant weakness in the justice system.

Another important judicial official in the case was Sir Robert Hyde the judge who wrongfully sentenced the Perrys to death. Andrew Lang (1959) explains Hyde's poor judgement at the trial as 'not only an illegal but an injudicious proceeding' (Lang, 1959, p.64) because he convicted the Perrys for murder without a body as corroborating evidence and did not call the four witnesses Perry named in his original testimony. There is further evidence to support Lang's claim of Hyde's ineptness as a judge from past events in his life. These include the unreasonably harsh sentence given to Benjamin Keach for publishing a non-conformist protestant book because Hyde was a catholic, which shows his tendency for personal bias in his judgement which is the sign of a poor judge as they are supposed to be unprejudiced and try fairly. It is also recorded that there were complaints that he did not perform his role as

ship tax collector properly which shows a lazy character which may explain his poor judgement in his willingness to convict the Perrys so easily with little concern for the evidence (Lee, 1891). These two instances give evidence to Lang's statement that Hyde wasn't a good judge as he was open to bias and was shown to be lazy in the past, thus showing why his poor judgement and role as a judge was a weakness in the system as the fact that someone as unfit for the role as him was deciding peoples fate is a significant weakness in the justice system. This poor performance again highlights the further problem of corruption in the system as Hyde only gained his position as such a powerful judge because his cousin was Lord Clarendon who was the highest-ranking minister in England as Lord Chancellor to King Charles II. This highlights the nepotism and further corruption present in the country at the time which presented a hugely significant weakness in the system as it allowed many unqualified and inadequate men to hold positions as judges thus explaining why their poor judgement can be seen to result in such extreme miscarriages of justice like this case of the Campden Wonder. In contrast it can be argued that the judgement of the judicial officials in the case was not all bad as Sir Christopher Turner did not try the Perrys at the first assizes due to the fact that there was no body with the murder accusation; this is clearly good judgement as he considered the fact that there was no corroborating evidence to support John Perry's confession and so refused to try them. Jill Wilson again supports this idea that the judgement of the judicial officials in this case wasn't all bad as she explains how Turner 'wisely considered' (Wilson, 2010, p.14), the evidence in the case before concluding not to try them for murder. Despite this, the conclusion can still be drawn that overall, the judgement of the named judicial officials in the case was overwhelmingly poor. This poor judgement is itself is a weakness in the system but the reason behind this is a wider structural weakness that stems from the selection of unqualified men for these judicial roles. This is an extremely significant weakness present in the 17th century justice system as it put the system in a position where it can't work in practice due to the inability of some of those involved to make sound judgements.

Second Significant Weakness – The Influence of Religion on The Justice System

In the 17th century England was Christian, it was present in every walk of life and at every level of society. This subsequently meant it would have a large effect and influence on people's minds and therefore the justice system as people obeyed Christianity as the law. This is evident as influential jurist Matthew Hale stated during the period that 'the Christian religion is a part of the law itself' (Wintersteen, 1890, p.273), showing the opinion people had at the time which isn't at all present in today's secular justice system. This favour of using Christianity as a basis for the execution of justice materialises as a weakness because many people were superstitious and could be convinced of someone's guilt when they were entirely innocent. Referring to the Campden Wonder, this superstition can be seen in the reaction of the people of Campden to the nosebleeds sustained by Richard Perry's children as he went near them. This convinced many people of the guilt of the Perrys as this was seen as a bad omen and that the devil was working through them. Peter Clifford elaborates on

this fact stating it was interpreted as a 'supernatural indication of the Perrys guilt' (Clifford, 2005, p.92), which again shows why religion at the time was such a weakness in the justice system as something as trivial as a nosebleed could be escalated into an admission of guilt by many due to superstition. Whilst it is important to acknowledge that the weight of this belief of guilt in the Perrys could be overstated by Clifford, it is certain that many of the locals who saw this would have been convinced and among the uneducated locals of a rural town in the 17th century this news would have spread and this mass opinion of the locals would have greatly weighed on the view of the Justice of the Peace in the area, so the significance of this superstition as a weakness in the system is very present.

To further this point of the influence of religion on the system causing it to be weakened in practice, Andrew Quesenberry (2022) argues that the justice system always placed the reason behind murders at the time as a religious one, that it was always the devil who was controlling the person. He references a case about a man named Enoch ap Evans who murdered his mother and brother over an apparent religious disagreement, the main force for the conviction of his guilt and his execution was that the devil urged him to do it. This again reiterates how the superstition present at the time led to the conviction of many which was a definite weakness in the system as in the Perrys case it helped to convict them of a murder they did not commit. Although it can be argued that religion influenced the justice system, Clifford explains how it is important to understand that Overbury in his original 1776 Pamphlet attempted to provide a 'factual record of events' (Clifford, 2005, p.172), which doesn't show any belief of any of the superstitious elements proposed by the locals. This suggests that these superstitious elements were quelled and didn't carry any weight among the judicial officials in the case as there is also no record of them in the trial and sentence of the Perrys at the assizes. Thus, it can be questioned if the influence of religion on the justice system was really as significant as it seemed.

Another way in which deep beliefs in Christianity during the period can be interpreted as a weakness is through the intense fears and beliefs in witchcraft at the time. The church encouraged prejudice towards witchcraft in attempts to rid England of paganism and secure Christianity as the only faith. This caused an extreme fear of witchcraft at the time among all levels of society, which can be seen in the higher class by King James 1st publications on witchcraft in his book 'daemonologie' and the tightening of laws against witches. The fear can also be seen on a more local level in rural areas and in the case of the Campden Wonder as George Clark (1959) shows the contemporary opinion on the events in a 1662 pamphlet about the Campden Wonder by a man named Charles Tyus. Clark explains how the 'innumerable stories of witchcraft' (Clark, 1959, p.112) in this pamphlet show the local opinion about the Campden Wonder and highlights this intense fear of witchcraft present at the time. Andrew Lang supports Clark in this as he also expresses that the fear of witchcraft was very present at the time, and this was known due to the 'accounts of trials in Glanvils sadducismus triumphates' (Lang, 1959, p.65). Both these authors express how the fear of witchcraft can be seen as a significant weakness in the system as it resulted in the targeting of certain people like Joan Perry as she was a widowed old lady which led to her being subject to prejudice and accused of being a witch. These accusations of witchcraft would convince many of her guilt in the case and show how this was a weakness in the justice system as it resulted in a conviction based on a prejudiced idea that was fuelled by the influence of Christianity.

In support of the idea that witch trials were much harsher and unfair, the case of the Pendle Witch Trials (2022) from 1612 can be analysed. In this case 10 people were hung for crimes relating to witchcraft which included murder. The main source of evidence in this case was the testimony of a nine-year-old girl which would not normally have been allowed but in the case of witchcraft it was. This demonstrates the prejudice against witchcraft and how this prejudice was a significant weakness in the justice system as it could result in the execution of ten people due to one possibly unreliable testimony from a minor. This highlights how the deep beliefs in Christianity could influence the minds of people and thus the justice system so strongly as to result in wrongful convictions and miscarriages of justice which shows how it was such a significant weakness in the justice system. Despite this, Clifford's (2005) point can be reiterated with the additional support of Clark who acknowledges how the idea of witchcraft was 'brooded over in Campden' (Clark, 1959, p.114), as it was ascertained by the locals, but it 'didn't cause the main miscarriage of justice' (Clark, 1959, p.114) which was the wrongful execution of the Perrys as there is no mention or acknowledgment of witchcraft at the judicial level of the case. Therefore, whilst the presence of witchcraft did have a clear impact on the contemporary opinion in the Campden Wonder, it ultimately didn't have any impact on the legal proceedings in the case and therefore it is a less significant weakness in the justice system.

Third Significant Weakness – Disregard for General Rules in The Justice System

The 17th century Justice System had many rules; these were not laws laid down by the King but more guidelines that the Judges should adhere to in order to carry out a fair trial. In the case of the Campden Wonder, two of the rules were not acknowledged which resulted in the execution of the Perrys. The first of these was the precedent of *Corpus Delicti* which stated that for a conviction in a homicide trial the crime must be 'proven by either inspection of the body or direct evidence of the killing' (Tucker, 1916, p.222), essentially meaning there must be some empirical evidence for the murder. With regards to the Campden Wonder it is clear to see how Robert Hyde failed to acknowledge this rule as there was no body or direct evidence found for the murder. This was most certainly an idea that was present in judicial proceedings at the time as Jill Wilson (2010) points out that the rule was applied by Christopher Turner in the Perrys first trial. Therefore, Hyde's disregard for the rule in the Perrys second trial is clearly a weakness in the justice system as this led to the Perry's wrongful conviction. The disregard for the *Corpus Delicti* rule can be seen as a significant weakness as there were other miscarriages of justice in the 17th century of as a result of the disregard for this rule. These cases are explained by Perkins (1962) who references the Jurist Matthew Hale who was responsible for the first record of the law in writing. In Hale's treatises there is discussion of a case in Staffordshire where one man forced another overseas against his will, however he was presumed to have murdered this man and was executed with the absence of a body and the supposedly murdered man returned a year later. This case bears a striking resemblance to the Campden Wonder, and both together

show the significance of the disregard of Corpus Delicti as a weakness in the justice system because it caused wrongful executions in at least two separate instances which could have very easily been avoided with adherence to this rule.

In addition to this the disregard of Corpus Delicti can be seen as an even more significant weakness when viewed from a modern context. This can be done with reference to the murder of April Jones in 2012; a BBC article (2013) was written which cited the Campden Wonder as the reason for the Corpus Delicti rule to be fully acknowledged in the justice system. The disregard for the rule was a clear weakness in the 17th century system that was exposed by the case of the Campden Wonder which subsequently caused the law to be fully acknowledged in the justice system. The fact the Campden Wonder is still referenced today some 300 years after it happened shows how important this rule is in the legal proceedings of a murder trial. Thus, the disregard of this rule in the 17th century system was evidently a significant weakness. An alternative view on this rule is provided by Mr Justice Maule in his statement that it is more of 'a rule of caution and prudence in cases of murder and not an absolute rule of evidence' (Maule, cited in Maugham, 1959, p.95). In this he entertains that although the law did have some notability, it was not an absolute rule that had to be obeyed in all cases. Thus, disregard for the rule was not altogether a weakness as it could sometimes be ignored on good judgement. It can be argued that Hyde ignored the rule at the second trial on good judgement because it had been 7 months since the supposed murder date and there was no sign that he hadn't been murdered, so Hyde was correct to actually not adhere to the rule as it was only one of caution. However, whilst Maule's reasoning is sound, he ultimately does not raise a valid point as the failure to acknowledge the rule was still a weakness in the system because the need for a body with a murder is most important element of a murder trial. This idea is still relevant to this day which is evident in the reference from the BBC article, further showing why the disregard of the rule in the case was a significant weakness in the 17th century system.

The second judicial rule that was ignored was the Hearsay Rule. This rule is best defined as prohibiting the use of extra-judicial confessions and evidence during a trial, these are statements and confessions made outside of court. This is easier to understand when put into context of the Campden Wonder case. This can be done by analysing John Perry's confession of the guilt of his brother and mother alongside his own while they denied it. This statement from John is clearly hearsay evidence as it cannot be proven and is essentially his word against his mother's and brother's. Therefore, according to the rule this should not have been admissible as evidence during the trial, but evidently it was used as all three Perrys were hung, even though this was the only evidence for Richard and Joan's involvement. This displays how the disregard for the Hearsay Rule in court was a definite weakness in the justice system. It is also known that the rule was present in the minds of judicial officials in England at the time as Wigmore (1904) explains how the rule as a 'living idea began only in the 1500s' (Wigmore, 1904, p.437), which shows the rule was around at the time of the Campden Wonder and so was clearly ignored. This reinforces the view that this disregard for the rule was a very significant weakness in the justice system as it resulted in the wrongful conviction of Perry's mother and brother.

The Hearsay Rule, like the Corpus Delicti Rule, is still referenced nowadays and can be analysed in its modern context to show how it is such an important rule in the justice

system. This is shown by Bobb-Semple (2017) who raises the 1951 case of Teper vs the Queen which isn't a murder case but is still relevant to further this point as it shows the hearsay rule in practice. It also takes place in British Guyana so may seem irrelevant but this country acts under the same jurisprudence as England due to the British Commonwealth, so it is relevant. Lejzor Teper was absolved of the proposed conviction of fraud as the only evidence against him was proven as hearsay evidence. Lord Normand who was one of the Judicial officials in the case, stated that 'The rule against the admission of hearsay evidence is fundamental' (Bobb-Semple, 2017) which ultimately supports how the rule is still relevant in deciding the fair outcome of modern cases. This shows why the absence of this rule in the trial of the Campden Wonder was most certainly a significant weakness in the justice system as it admitted the guilt of Joan and Richard Perry which led to their wrongful execution. Lord Maugham opposes this idea as he raises the valid point that 'there was no settled rule in 1661 against the admission of hearsay evidence' (Maugham, 1959, p.95), so John's confession technically could be allowed in court because the idea of the rule was not settled at that point. Wigmore supports Maugham's view as he explains that the rule did not attain 'final precision until the early 1700s' (Wigmore, 1904, p.437), so the Judicial Officials can be given the benefit of the doubt for ignoring the rule. This shows that the disregard of the Hearsay Rule wasn't a weakness in the system as the rule wasn't fully developed at the point of the Campden Wonder. Maugham expands this point to discredit the disregard of the Corpus Delicti rule as a significant weakness. He explains how the first written appearance of the rule was by Matthew Hale who 'dealt with the problem in his Pleas of the Crown' (Maugham, 1959, p.94). Pleas of the Crown was published in 1678 which suggests that, like the Hearsay Rule, this rule also did not see full development until after the case of the Campden Wonder. To this end Maugham successfully shows why the disregard for these two rules was not the most significant weakness in the justice system as neither rule was fully realised in the system so the benefit of the doubt can be given for not applying these rules.

Conclusion

To conclude this investigation, I would like to reiterate that the Campden Wonder was an extreme miscarriage of justice that resulted from a culmination of all three of these weaknesses in the 17th century justice system. However, my aim ultimately was to investigate which of these was the most significant. By this I mean the weakness which played the largest role in contributing to the wrongful execution of the Perrys, and had this weakness not been there it would have been very likely that the Perrys would have been absolved of blame. Although the large religious influence on the system was certainly a weakness, in my opinion it was the least significant because it only played a part on the local level with Christian influenced ideas like witchcraft and superstition being the reasons people suspected the Perrys were guilty. This is known because there is no mention of these elements having a part to play in the conviction in the court proceedings and Overbury's pamphlet. I therefore concluded that it was a more uncertain idea to assume that this was the most significant weakness in the justice system as there is no evidence in the case of the religious influence on the judicial level. From my interpretation, it can then be seen how the disregard for the general rules in the system was a greater weakness as this can clearly be

seen in the legal proceedings of the case. There was very clearly no acknowledgment of the Corpus Delicti rule or Hearsay rule by Hyde at the second trial which led to the Perrys execution. Yet in my opinion it is not the most significant weakness because although there was some awareness to these rules it is known as a fact that these rules were not officially expounded into the justice system until after the events of the Campden Wonder so did not have to be adhered to. This brings me to my conclusion that the poor judgement of Judicial Officials was the most significant weakness in the justice system. This was highlighted in the case of the Campden Wonder in their inability to effectively analyse all the evidence given and to act without bias in their role. My investigation showed that the poor judgement was a result of the unqualified nature of these officials as they often gained their legal positions due to corruption and nepotism, which left them unfit to perform their legal duties. This is why many serious miscarriages of justice like the Campden Wonder took place. This then shows why it is the most significant weakness because the system may still work to some extent with the influence of religion or lack of general rules, but it completely breaks down in practice and results in wrongful executions when some of the officials who cast judgement are unfit to do so. This shows why this weakness was the most significant in the 17th century justice system and this was highlighted very clearly by the case of the Campden Wonder.

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Appendices

Appendix A

Historical account of the events of the case of the Campden Wonder

The Campden Wonder takes place of course in the humble Cotswold market town of Chipping Campden. One would expect to lead a quiet life living in Campden however recent years had brought much turmoil to the town. The year was 1660 and the restoration had just begun with Charles II coming to the throne as England had just survived near 20 years of instability and political uncertainty in the civil war followed the protectorate form of government so the presence of violence in Campden was not too uncommon. Thus, the Case begins on the morning of the August 16th where William Harrison, the steward of Lady Juliana of the manor house in Campden, set off to collect rents from the neighbouring villages of Paxford then Charingworth and then Ebrington before returning home. However, Harrison was late back so his wife sent out their servant John Perry to look for him, but he also did not return that night. The following morning John returned and set out again with Edward Harrison the son of William, these two found on the road between Campden and the villages many of William Harrisons possessions covered in blood.

John was taken in for questioning by Overbury the local magistrate and John's story ascertained that after being sent out he rested for a couple hours with two friends as he was afraid of the dark then at dawn he set out to the villages and found out that Harrison had visited and collected rents the day before. Overbury questioned the four men John named and they all corroborated his story, but Overbury was still suspicious so placed him in the Town lockup. After a week in the town lockup John confessed to Overbury that he helped his mother Joan Perry and brother Richard Perry who had murdered Harrison on his return from Ebrington to steal the rent money. These two were immediately arrested and questioned by Overbury at his manor in a neighbouring village where they denied all involvement. However, while being escorted back to Campden a small ribbon with a slipknot at the end fell out Richard's pocket; John immediately claimed this was the murder weapon. In addition to this upon walking the Perrys through Campden to the lock up, Richard Perry went to greet his children but at once their noses began to bleed, this was seen as a very bad omen and convinced many that Joan was a witch as she was also an older widowed lady. All these instances together swayed the opinion of the locals with most now believing that the Perrys were guilty. Further questioning from Overbury caused John Perry to also admit that he and his brother were guilty of a theft of rent money from Harrisons house the year prior.

The Perrys were taken to the Gloucester Assizes in September of the same year, however the Magistrate Christopher Turner refused to try the Perrys for the murder as there was no body. The Perrys pleaded not guilty to the robbery however advice was given by Judicial officials in Gloucester to plead guilty to the claim as they would receive no penalty under the Act of Indemnity and Oblivion which ruled out all petty crimes from the years before the restoration. This ultimately was terrible advice as their guilt in the robbery convinced many of their guilt in the murder. The next Assizes were held in March 1661 where the magistrate

was Robert Hyde who sentenced all three to death for the murder of William Harrison, at this assize John attempted to plead madness but this was overruled. The Perrys were then hung back in Campden with Joan Perry being hung first to rid her spell on her two sons due to her being a witch. Over a year later William Harrison then returned to Campden having been sold into slavery, for the purpose of this project this is where the account of the events concludes as this was when it was realised the extreme miscarriage of justice.

Appendix B

1818 map of area around Chipping Campden with locations labelled relevant to the case.

