THE HONORABLE PROPRIETARIES V. SAMUEL WALLIS: "A MATTER OF GREAT CONSEQUENCE" IN THE PROVINCE OF PENNSYLVANIA

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On December 13, 1770, and again two weeks later, an official notice appeared among the advertisements in the *Pennsylvania Gazette* that, in contrast to the nearby items promoting the sale of miscellaneous merchandise and nostrums, or announcing the dates of departure of vessels bound for abroad, delivered a stinging message:

Philadelphia, December 10, 1770

WHEREAS we have been lately informed, that a certain Samuel Wallis has given out, that he has obtained grants for lands within the Proprietary Manor, at Muncy, and other Places within the new purchase, upon applications and orders, before that purchase was made; and that he hath sold several of those tracts of land: These are to inform the public, that any such grants must have been obtained by fraudulent practices in making the surveys, and impositions upon the proprietary officers. And there is great probability, that such practices and impositions may have been committed by the same Samuel Wallis, as he has lately been

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detected in a fraud, and practice of the like kind, in taking up lands within the Proprietaries Manor of Lowther . . . which he has been obliged to give up. Buyers of the said Wallis are therefore advised to observe the date of the applications, . . . and if such applications bear date before the 5th day of November, 1768, they may depend upon it, the grant hath been fraudulently obtained, and that it will not be safe to purchase . . ..

JAMES TILGHMAN, Secretary of the Land Office,
JOHN LUKENS, Surveyor General[1]

That notice triggered a controversy that, pursued in more than one venue, would last for three years and come to an end only with the entry of a final court judgment. Strange to say, it may now be possible, by drawing upon a variety of sources, to develop a more informed perspective about the controversy and its background than most of those who heatedly participated in it could have done. In attempting to revive that old dispute and to bring the contestants into focus, the author has two distinct but related objectives in mind. The first is to shed light on the early career of Samuel Wallis, a shadowy but ubiquitous presence in the Pennsylvania backcountry who, long after he died, achieved notoriety for his treasonable conduct during the Revolution.[2] A specific task will be to track Wallis as he maneuvered to acquire, both for himself and for others in whose employ he acted, portions of the vast acreage that the proprietors purchased from the Indians at Fort Stanwix in the autumn of 1768 (commonly called the "New Purchase"). It was his willingness to run risks in dangerous places far removed from civilized Philadelphia, his knowledge of the terrain and of the "vagaries of humanity" encountered there, and his secretiveness that recommended him as an agent for two members of the Quaker elite who, while keeping their own hands clean, sought to capitalize on the massive accession of Indian lands.[3]

The second objective is to reconstruct in some detail a legal proceeding that the provincial authorities felt compelled to bring against Wallis. What began as a frontier squabble soon escalated into a war of words in the public press and a serious contest about title to valuable manor land that the proprietors claimed for their exclusive benefit. Challenged by Wallis to do so, the proprietary officers had no choice but to seek relief in court. The suit they brought in ejectment led to a trial in Reading before two justices of the Pennsylvania Provincial Supreme Court, sitting on circuit, and a jury the

parties selected from a large array of prospective jurors summoned by the sheriff. Several prominent lawyers in the province lined up to represent the competing litigants, and one of them has left a record that provides rare access to a courtroom engagement in Pennsylvania prior to the Revolution.[4]

Samuel Wallis was a birthright Quaker. The third in succession following his grandfather and father to bear that name, he was born in April 1736, in the vicinity of property his father was about to purchase along Deer Creek on the west side of the Susquehanna River in present-day Harford County, Maryland. There, close to the still disputed boundary between the two neighboring provinces and at the gateway to the Susquehanna Valley and Pennsylvania's largely unsettled interior, he spent his youth and acquired what was probably a better than average rustic education. In December 1760, he declared his intention to go to Ireland and England "on account of trade" and applied to the Deer Creek Monthly Meeting for a traveling certificate, the necessary favorable introduction from his home meeting to Friends abroad. As the elders of the meeting paused longer than usual over such a request, he left for Philadelphia to launch his career in trade.[5]

Purchasing goods from one John Moore, a jobber, and incurring debt to Moore in excess of £500 for which he gave Moore his bond, Wallis sailed with the cargo he purchased for Quebec in April 1761. To his dismay he discovered that the market there for these goods was so "dull" as to be nonexistent, and a few months later he was back in Philadelphia, in default on his substantial obligation to Moore. Whether in tribute to his persuasiveness or to Moore's gullibility, he next prevailed on Moore to turn over to him "a large Quantity of bottled Liquors" that, destined for profitable sale in the West Indies, went astray to Moore's further disadvantage. These two unfortunate ventures landed Wallis in the Philadelphia gaol, where Moore vowed he would stay for the rest of his life, or until "Friends and Relations in the neighboring Province . . . will no doubt interpose and administer assistance to him."[6]

Moore miscalculated if he counted on Wallis's "Friends and Relations" in Maryland to bail him out by paying his debts. Yet, as Wallis languished in prison, his family knew of his predicament and may have offered help, at least enough to engage counsel to act on his behalf. In September 1763, the Pennsylvania Assembly received a petition from Samuel Wallis, "a Prisoner in the Goal [*sic*] of Philadelphia." The handiwork of someone more skilled in such pleadings than Wallis, it concluded rather grandly with the prayer that "the House, as Guardians of Liberty, would extend that invaluable Blessing" to the petitioner. Moore opposed Wallis's release—or, in the quaint legal

parlance of that time, his "enlargement"—necessitating a renewed application to the assembly at its next session. After further debate, the assembly passed and the governor approved special legislation releasing Wallis from jail, but on condition that he make full disclosure in open court of all his assets and assign them over for the benefit of the creditor or creditors "at whose suit he is imprisoned." He was permitted to retain only "the wearing apparel and bedding for himself, not exceeding ten pounds in value in the whole."[7]

Wallis preserved in his personal papers documents that would remind him of this humiliating defeat, including a memorandum book in which he recorded the precise number of days he had spent in prison, beginning on January 19, 1763, and the outlays he made from depleted funds to defend himself. He had consulted two of the finest legal minds in the province of Pennsylvania, both originally of Maryland Quaker stock, who may have rendered assistance in more than a strictly professional capacity. Joseph Galloway was a leader of the assembly Wallis had petitioned, and Benjamin Chew, Galloway's first cousin, was the legal officer on whom the proprietors relied to protect their interests. Each of them collected from Wallis a fee of £2 10s. —"for advice," in their client's terse notation.[8]

The act providing for Samuel Wallis's release recited that "a considerable number of reputable inhabitants, merchants, traders and others in the city of Philadelphia," while understanding that "it cannot be desirable to make precedents of enlarging debtors from the suits of their creditors," nevertheless had intervened on the petitioner's behalf.[9] Among Wallis's unnamed supporters we may be confident were Abel James and Henry Drinker, partners in the flourishing mercantile house of James and Drinker and influential members of the Philadelphia Quaker community; although unsympathetic to the proprietary party, they were essentially apolitical. Just a year after he had emerged from prison a chastened debtor, these Quaker merchants drafted Wallis to collect debts owed their firm, instructing him to "press for payment in the warmest manner." But by then Wallis had decided to head off in a different direction and take up work for which he was better qualified: searching out and acquiring land in the remote parts of Pennsylvania.[10]

The proprietary secretary published an advertisement in June 1765, setting forth new procedures for "granting Lands to any Person desirous to settle any vacant Land purchased of the Indians & not appropriated to the Proprietaries use." This so-called application system was designed to expedite the patenting process for land claimed by settlement and improvement. As

the necessary first step, the applicant seeking to acquire country land no longer had to obtain a warrant to survey. Instead he could appear in the land office in Philadelphia and register his name, the date of his appearance, and the approximate location of the land. The secretary of the land office regularly sent copies of these applications to the surveyor general who would in turn instruct the deputy surveyor in whose district the land was located to prepare a survey. To be completed within six months and returned to the surveyor general's office, the survey typically outlined the tract or parcel by courses and distances, showed prominent topographical features like streams and hills, and identified, when known, adjoining property owners by name. After the return of the survey, the applicant had another six months to pay the receiver general for the land at the preferential rate under this new system of £5 per hundred acres (plus the annual quitrent of a penny per acre). Once payment was made of the sums owed, a warrant issued directing the surveyor general to accept the survey and authorizing the proprietary secretary to make out the patent, which was, in effect, a deed from the proprietary government.[11]

To take advantage of the opportunities offered under the application system, James and Drinker hurried to put their representative on the ground as soon as possible. They commissioned Wallis to act as their agent. In the repeated trips he took westward across the Susquehanna River to Cumberland County, they bankrolled him, covering all the expenses he incurred. Moreover, their support continued for years to come, as Henry Drinker or his clerk recorded the sums advanced and the mounting total of the firm's investment. The first entries made on "10 mo 31 1765" came to £34 2s., paid to Wallis for preliminary investigations at the land office and expenses on the road, including the cost of purchasing a horse. For the trouble he would go to on their behalf, Wallis was to receive a quarter interest in the net proceeds realized from the sale of patented lands.

This informal arrangement was soon translated into formal documents. On September 23, 1766, Wallis executed three indentures and a bond spelling out his responsibilities not only to James and Drinker but also to three other silent partners who had lesser stakes in the enterprise. While avoiding the identification of partners, and without the signatures of James and Drinker to legally bind them, Wallis's bond in the amount of £500 nevertheless resembled a partnership agreement. In a series of introductory recitals, the bond referred to applications submitted under more than a hundred different names for upwards of 30,000 acres, located in York and Cumberland

Counties, but mostly in the latter. The secretary of the land office had issued orders to survey; and the various and several "Appliers" had assigned, or were about to assign, their interests to Samuel Wallis.

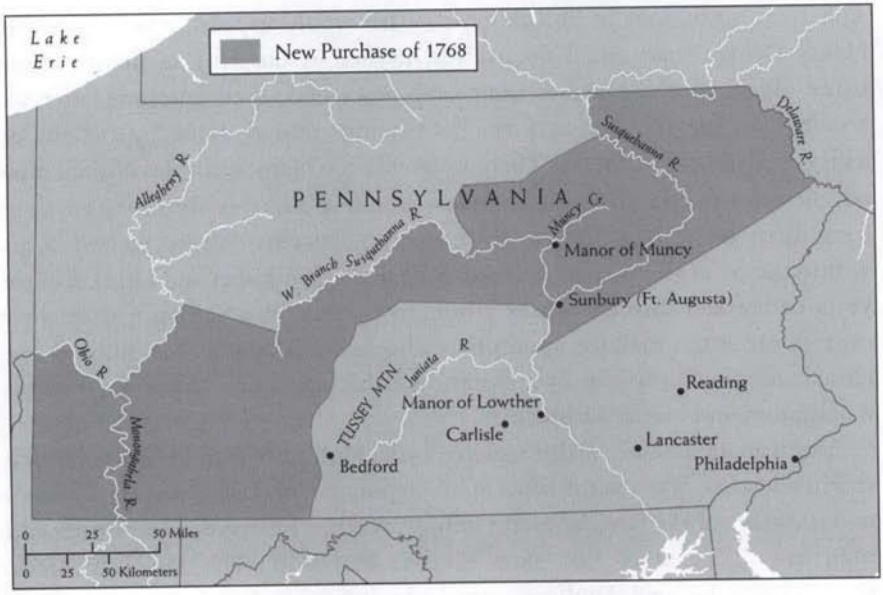
Then came the critical undertakings in this *de facto* partnership agreement. Abel James and Henry Drinker "agreed to Advance all the Monies needfull and necessary for Locating, Surveying, laying out, Returning the Surveys and patenting all or any of the Premises, and pay all purchase Money, Costs, Charges and Expences attending the same." For his part and as a condition to his obligation under the bond, Wallis agreed to produce patented lands in sufficient quantity that, when sold, would reimburse Abel James and Henry Drinker for the sums they had advanced. Anything left, whether in land or in money, would then be divided among the several parties identified in the bond in accordance with their recited proportionate interests. On the very next day James and Drinker delivered to Wallis some £1,300 to pay into the land office, while at the same time obtaining his written acknowledgment of the total balance outstanding.[12]

Wallis concentrated his efforts on Cumberland County. Formed in 1750, that county encompassed at the inauguration of the application system a large territory bounded by the Susquehanna River to the east, the boundary shared with York County along Yellow Breeches Creek to the south, and the ridge of the Kittatinny Mountains to the west and northward. The northern line, while imprecisely set, marked the extent of the last purchase from the Indians at the Albany Congress in 1754. Beyond that line lay territory that at least in theory was intended for the undisturbed possession of the Native Americans who, during the eighteenth century, were in steady retreat before advancing settlers and speculators.[13] Although William Penn had the absolute title in law to his province under the royal grant of 1681, "that great and good man," as an early nineteenth century opinion of the Pennsylvania Supreme Court referred to Penn, "did not conceive that he had a title in *conscience*, until he had obtained the consent of the natives."[14] His heirs, as the succeeding proprietors, felt similarly constrained to negotiate a series of purchases with the Indians, not all of them, however, models of fair dealing.[15]

From the town of Bedford, then in Cumberland County, Wallis reported to James and Drinker in the late fall of 1766 that he had been "buseyly Ingaged for some time in laying a number of our Warrants & Orders" but that he had encountered "a multiplicity of Obsticles." Some of those obstacles were attributable to conflicting claims asserted by the agents of Baynton and Wharton, Philadelphia merchants who snatched up land warrants in

order to protect their firm's lucrative trading routes with the Indians. The under surveyor, or the deputy to the deputy surveyor for that district, who had accompanied Wallis in the field, had declined to execute Wallis's orders in spite of the fact that the competing warrants for Baynton and Wharton called for "Land at least 20 miles from that place." Wallis lamented that such a departure from standard practice "Can only serve to Create us Trouble & Expence." Even so, not all had been lost, for, having registered his protest with the deputy surveyor Richard Tea, Wallis was convinced that Tea would henceforth act "with the greatest Complysance and . . . give us all the Dispatch possible." It may have been that disclosure about Tea's anticipated cooperation which prompted a postscript: "I think silence in these matters (at least for some time) would be prudent."[16]

FIGURE 1: 1768 New Purchase. Courtesy of CARTO GRAPHICS, 2003.



Richard Tea and his deputies did prove to be complaisant allies, as Wallis procured with their help various orders, warrants, surveys, and, most valuable of all, patents for the land referred to in the bond he had given James and Drinker. The treaty of Fort Stanwix in 1768 reshaped in a dramatic way the province of Pennsylvania, adding to the land area open for settlement or speculative purchase a wide swath cutting diagonally from the northeastern

corner to the southwestern boundary of the province. The Indians were once again squeezed northwestward as the southern boundary of the land reserved to them for their use, following an irregular course, coincided at a certain point with the West Branch of the Susquehanna River. If anything, Edmund Physick, one of the proprietary officers, underestimated when he wrote to William Penn's son, Thomas Penn, in England that the "Indians have lately released a large quantity of Land, equal, I suppose, to one quarter part the whole province."[17]

From debtors' prison in 1764, Wallis had progressed far enough to begin in 1769 the construction of an imposing house for himself on a tract which he had acquired in the New Purchase and which would be known as "Muncy Farm."[18] As another measure of his change in status, he signed his will in that same year. A bachelor having no apparent prospect of marriage, but otherwise in declared "good Health," he took this further step toward respectability not because of any great concern of his but rather because of the anxiety of his backers in Philadelphia. What would happen, Abel James and Henry Drinker had asked themselves, if their resourceful agent, in whose name alone all these transactions had proceeded, died intestate after an accident on the trail, or as a result of being mowed down by Indians or a disgruntled land claimant? There were only too many examples of such misadventures to make them wary.[19] How would Wallis's estate in its growing complexity be settled? To allay these anxious concerns, Wallis referred in his will to the bond and related indentures he had given James and Drinker three years before and directed his executors to proceed in accordance with their provisions. After making appropriate dispositions among his siblings, he closed any remaining gap by appointing as his executors "my trusty Friends Abel James and Henry Drinker."[20]

Less than a year later Wallis married Lydia Hollingsworth in Christ Church in Philadelphia. She was the niece of his stepmother and the daughter by a second marriage of the late Zebulon Hollingsworth, a prosperous landowner and merchant at Head of Elk, now Elkton, Maryland. The Hollingsworths, Quakers who became Anglicans, would be impressively represented in both Philadelphia and Baltimore society in the last half of the eighteenth century.[21] Yet Wallis's marriage and apparent move up the social ladder signaled the beginning of new difficulties for him. The Philadelphia Monthly Meeting, which he had joined as soon as he began to act for two of its most respected members, took exception to his marriage by a "hireling priest." Added to the meeting's stated concern on that account was the report that Wallis had been

observed "attending the Stage Plays."[22] Now this not uncommon double transgression, an Anglican wedding ceremony and frequenting the theater, the meeting would, in due course, have been forgiven had Wallis expressed sincere penitence for his disorderly conduct. However, in the minutes of the monthly meeting held at the end of December, the clerk recorded a more serious charge against Wallis, one "which affects his moral character ... of his purchasing lands of the Indians, before their late sale to the Proprietor."[23]

This latest complaint appears to have been the direct result of the notice that the secretary of the land office, James Tilghman, published in the *Pennsylvania Gazette* during that same month. The nervousness of the meeting's elders could only have increased as the battle between Wallis and Tilghman, occupying the *Gazette's* lead columns, raged off and on for five months more.[24] These two adversaries traded invective, each having the special knack of knowing how to wound the other. Tilghman found it distasteful to enter "into any Kind of Contest with Men [of] low and illiberal Characters," but such must be, he prefaced his first long reply to Wallis, "the Lot of those in public Stations, be they ever so guarded in their Steps." Not to be outdone, Wallis fired back that, stripped of the lawyer's "Flowers of Eloquence," the secretary's performance was "as disgusting as the Hero of a Puppet Show despoiled of its Ornaments."[25]

The first of the two charges the secretary leveled against Wallis was that he had procured through fraud patents on land within the Manor of Lowther, located on the Susquehanna River, roughly across from the state capital today at Harrisburg. Though he had a long and tall tale to tell by way of extenuation, Wallis did not deny that, when pressured to do so by proprietary officers, he had surrendered these interfering patents. Tilghman's second charge was the more serious one. He accused Wallis of using the same tactics of fraudulent concealment to obtain patents for tracts that were within the New Purchase on Muncy Creek, a tributary of the West Branch of the Susquehanna River. These tracts had also been surveyed for the proprietors' benefit as manor land.[26]

According to Tilghman, Wallis had taken applications for land located in the vicinity of the town of Bedford near the foot of Tussey Mountain and shifted them about seventy miles eastward to the Manor of Lowther. The ruse that permitted the subsequent conversion to patents was Wallis's submission of surveys that deliberately omitted any reference to topographical features or recognizable place names which would have otherwise alerted the surveyor general. Such also was Wallis's deception, Tilghman insisted, in attempting to appropriate a large segment of Muncy Manor by shifting discarded

applications for land near Bedford some eighty or ninety miles northeastward to Muncy Creek. The sole difference was that on this second occasion Wallis reached for land within the New Purchase before the Indians had released it at Fort Stanwix. Had Wallis disclosed, as he implied he had in responding to Tilghman, that the tracts for which he tendered surveys in the summer of 1768 lay on "the West Branch of the Susquehanna, on a creek known by the name of Muncy Creek," he would have been less the rogue than Tilghman made him out to be. For, in that circumstance, he might have plausibly claimed either that that the proprietary officers were grossly negligent in their review or that they were prepared, for whatever reason, to take action anticipating the New Purchase. But what in fact, asked Tilghman rhetorically, did Samuel Wallis do? He concealed and misrepresented the true location of these lands and foisted upon a deputy surveyor whose district was far distant from Muncy surveys that Wallis had made himself. All grants so procured, Tilghman summed up, "must be deemed surreptitious, fraudulent, and void in law."[27]

In this angry newspaper exchange with Tilghman, Wallis confronted a dilemma. He had no choice but to admit that "the judicious part of the inhabitants of the province, particularly those under the denomination of Quakers," believed that "the first Proprietary's original agreement with the Indians should be punctually observed." He went further and made an even more telling admission, one against his interest that counsel in the modern era would have cautioned him not to make: " . . . the only circumstance attending my obtaining these lands, upon which I reflect with sorrow and regret, is, that I have, in some measure (tho' innocently) violated this equitable regulation, and given uneasiness to the religious society with whom I profess." Yet, with no apparent discomfort, he proceeded to take a stand to which both he and his lawyers would steadfastly adhere. That William Penn chose to cultivate the good will of the natives by resorting to a mere ceremony of purchase, that "he indulged their humour, and for trifling sums procured the peaceable cession of very extensive and valuable parcels of land," and that his heirs likewise engaged in such ritual appeasement, none of that, Wallis argued, prevented the proprietors from exercising a right "antecedent to those purchases" by granting any part of the province "to whom they please, whether ceded by the Indians or not." But even for a combative Samuel Wallis it was apparent that this title to Muncy would "neither be established nor dedicated by a newspaper contest." The controversy could be settled in the only forum left: " . . . if ever the Proprietaries, or their agents, should think proper to call in question my rights to lands in the New

Purchase in a legal way, I have no doubt of making it appear sufficiently clear to twelve honest men of the country."[28]

A loyal retainer of the Penn family who was appointed receiver general and keeper of the great seal of Pennsylvania at the beginning of 1769, Edmund Physick had for some months seen a court case coming. He sent Penn a detailed report on the "many Villainous Inventions" employed by Samuel Wallis in claiming parts of the Manor of Lowther. Reluctant to deal with him except in the presence of witnesses, Physick finally persuaded Wallis to relinquish the patents that interfered with the Manor of Lowther. He did not, however, expect any such amicable disposition of the patented claims Wallis had on the lands to the northward on Muncy Creek.[29] In late September 1770, Physick heard that Wallis had sold part of the Manor of Muncy, a rumor that, if confirmed, would compel Physick to seek writs of ejectment against the persons wrongly in possession.[30] By March 1771, matters had gone from bad to worse. Physick wrote Penn about the clash between Wallis and Tilghman "in the publick papers," occasioned by Tilghman's advertisement which contained, so Physick had cautioned Tilghman, injudicious language that "would inflame and harden Wallis." Even though the Philadelphia Monthly Meeting might eventually lean on its errant member to modify his conduct, Physick felt it necessary to engage as counsel Edward Biddle of Reading in Berks County—for a retaining fee of £12. Biddle was "a Lawyer of considerable eminence & Weight" who would, Physick assured Thomas Penn, "do all in his power to serve" the proprietary interests.[31]

From afar Thomas Penn invariably ratified the action taken by Physick. Still, he more than once revealed his perplexity about the controversy with Wallis and even, amusingly, about where the proprietors' Manor of Muncy was located. "We are at a loss to know where the Tract of Munsey is, whether in Jersey or in Pennsylvania," he wrote Physick in November 1770, eliciting from Physick this clarification in a letter dated four months later: "You are pleased to enquire where Munsey is, I answer it is situate up the West Branch of Susquehanna, about 24 Miles above Fort Augusta, called in old Mr. Nicholas Scull's Map Ocockpockony Creek, and in the Maps I sent you, [it] is expressly called Munsey Creek alias Canasserago Creek."[32]

Wallis's title claim to a generous slice of the Muncy Manor rested on three applications dated August 1, 1766, to James Alexander, Robert Roberts, and Bowyer Brooks, and on an order dated March 17, 1767, to Robert Whitehead. These applications and order were assigned to Wallis as purchaser; surveys were made and returned to the surveyor general's office; and patents were

issued to Wallis on or about September 25, 1768, and on April 12, 1770. To the embarrassment of the proprietary officers,[33] the patented lands lay within the New Purchase, a fact that could only be explained, as Tilghman was at pains to contend, by Wallis's fraudulent assurance that the lands lay within an area that the Indians had ceded many years before. Were James and Drinker, as Wallis's undisclosed partners, aware of his maneuvering, and did they stand to gain from it? That question will have to be faced more than once in the narrative ahead. One may take, however, as persuasive circumstantial evidence that the bond that Wallis had delivered to James and Drinker in September 1766 referred specifically to applications in the names of Alexander, Roberts, and Brooks, and that according to the running account of moneys advanced, Wallis received substantial sums from James and Drinker at the very times he was obtaining these patents at the land office.[34]

Either on his own initiative or at the urging of James and Drinker, Wallis sought legal advice—perhaps from "several eminent Gentlemen of the Law," as he boasted.[35] At the outset he was content to rely on his fellow Marylander and prior rescuer Joseph Galloway. Though Galloway gave Wallis a favorable opinion on the alleged interference with the Manor of Lowther, he soon professed to be very put out with his client. When asked about his representation, he told Physick that Wallis had imposed on him by extracting answers to hypothetical questions. If a court contest ensued, Galloway desired that the proprietors know that they could count on him to set matters right.[36]

But old ties held firm. In the spring of 1771, Galloway came through with another opinion for Wallis, this time concerning Muncy. It may give some insight into the process at work that the background statement and the questions propounded for Galloway's consideration were in Wallis's handwriting. The first issue was whether the proprietors had the right to grant lands "that are unpurchased of the Indians." Perhaps because he had been burned before, Galloway conditioned his opinion on "the facts above stated," which, as Wallis had set them out, precluded any element of fraud in obtaining the patents. Was it also a qualification to his opinion, or an affirmation, that he added the sentence, "Of course the above mentioned patents must be valid"? As to the other question he addressed, he believed that the fact that the survey contained substantially more land than provided for in the warrant or order was not "a sufficient reason for vacating the patent, there being no fraud . . . in obtaining such overplus," and also because Wallis had volunteered to pay for the excess acreage.[37]

All in all, this opinion of Galloway's was not a ringing endorsement. A week later Wallis received a less cautious written opinion from the lawyer who would represent him in court. Headquartered in Lancaster and thoroughly familiar with conditions on the frontier, George Ross had been practicing law in Pennsylvania for twenty years; he would serve as a member of the Continental Congress in 1774 and eventually sign the Declaration of Independence. On the same recited facts, Ross showed none of Galloway's misgivings. Without hedging, he was "of the opinion," and then "clearly of the opinion," along exactly the lines that would have pleased Wallis. Most valuable of all, he delivered what Galloway had shied away from, a solid opinion as to title. Ross ended with the flat assertion: " . . . a good Title to the Tracts of Land mentioned above is in Samuel Wallis."[38]

The action in ejectment that Edward Biddle brought on behalf of the proprietors to challenge Wallis's claim to good title on Muncy Creek was a much used, versatile, and, on the whole, efficient weapon in the armory of Pennsylvania lawyers during both the colonial and the postcolonial periods. In 1782, while charging a jury in an ejectment case, Chief Justice McKean remarked in passing, "An *ejectment* is almost the only action for trying the title to lands in this state."[39] By late Tudor times, the common lawyers in England had broken free of feudal constraints in determining the ownership of real estate, but they did so at a cost. The pleading device they hit upon obscured the nature of the complaint and the identities of the real parties in interest. To preserve the notion that the dispute was about possession and not about title, a wholly fictitious tenancy was created on the plaintiff's side, which was matched by an equally contrived tenancy on the defendant's side. Thus suits in ejectment were often styled *John Doe v. Richard Roe*, or, more colorfully, *Timothy Peaceable v. Shamtitle*.[40]

Wallis had already sold or leased land in the Manor of Muncy, or "Job's Discovery" as it was also known, to John Scudder and Richard Stockdon, so it was their names as defendants that first appeared in the captions of the two suits begun by the "Lessee of the Honorable Proprietaries."[41] Nevertheless, Wallis assumed complete responsibility for defending these suits (which were consolidated for trial), and for ease of reference, it will be convenient henceforth to refer to one defendant, Wallis, and one plaintiff, the proprietors. Reflecting the fractional ownership rights they had in lands in the province, the narrative or complaint states that Thomas Penn and his nephew John Penn had leased on April 1, 1771, to "Timothy Peaceable" three quarters and one quarter, respectively, of Job's Discovery for a term of seven years.

In the language of trespass that had not changed materially at common law for half a millennium, the plaintiff complained that the defendant on the same first day of April "with force and arms . . . did enter and the said Timothy from his farm aforesaid did eject and other harm to him the said Timothy then and there did to the great damage of him . . . and against the peace of our said Lord the King." In order that the issue be joined, Wallis acceded to the "common rule," which means that he accepted through his counsel these useful fictions and pleaded not guilty ("non cul" in the docket entry, for "*non culpabilis*"). The prescribed course having thus been followed, the two cases appear for the first time on the provincial supreme court's docket in its 1772 April Term, accompanied by the notation of a "Rule for Struck Jury & View & Tryal."[42]

Whether because of the presence of the proprietors as plaintiffs, or because of real estate as the subject matter, or because of the £100 claimed as damages, this suit came almost instantly within the *nisi prius* jurisdiction of Pennsylvania's highest tribunal.[43] That meant that two justices of the supreme court would in their travels on circuit arrive at Reading, preside over the trial, and take the verdict of jurors summoned by the sheriff of Berks County. Why Reading and Berks County? For a brief interval, Berks County included within its boundaries the Manor of Muncy. If not strictly a venue consideration, it may also have weighed in the balance that Reading, as an established county seat, had a courthouse sufficiently large to accommodate the crowd expected.[44]

On August 22, 1772, Edward Biddle sent a letter to Richard Stockdon, and presumably also to John Scudder and Samuel Wallis. "Please to take Notice," he informed them, "that a jury will be struck on Monday the twenty first day of September next between the hours of ten and two of the Clock— before Edward Shippen, Esquire, Protonotary of the Supreme Court of Pennsylvania in his Office in Philadelphia at which time and Place you are desired to attend."[45] Though more than a year would pass before the trial began, the selection of this jury may have commenced as early as this appointed date. By rule, the court had provided for a "struck jury," sometimes referred to as a special jury. In a Pennsylvania context it signified that a list of forty-eight prospective jurors or veniremen summoned by the sheriff would be winnowed down to the trial panel of twelve.[46] The bar of that time was so familiar with the process that there is no precise guidance on how this final panel emerged. Under the comprehensive statutory regulation of jury service enacted in 1785, the legislature explicitly recognized the right of the parties "to enter a rule for a special jury," but as to the procedure of selection, provided that the jury of

twelve men would be composed "in such manner as special juries have heretofore been struck." Based on subsequently reported cases and other authority, it seems likely that the proprietors and Wallis each had the discretionary right to strike up to twelve names. Thereafter the full jury was assembled by drawing at random from the pool of remaining candidates. On this final cut the jurors whose names were drawn—in the words of the 1785 statute, by an "indifferent person"—could be challenged only for cause.[47]

That original array of forty-eight potential jurors is still visible in a working document Samuel Wallis prepared for his counsel's use in the selection process. Beside each name he jotted down his own candid appraisal of that venireman's qualifications and biases.[48] Of the factors he considered critical, religious affiliation was foremost. His aim being to pack the jury with fellow Quakers, the final tally should have pleased him; nine out of the twelve installed in the jury box were his coreligionists. As a second factor to weigh in the balance, he sought to eliminate any candidates who might be swayed by Edward Biddle's well-known persuasiveness; none of the seven veniremen to whom he attributed such susceptibility ("thought to be influenced by Edw'd Biddle") wound up in the jury box. More than a third of the forty-eight Wallis labeled "Dutchmen," a hardly surprising fact given the large mid-century immigration of Germans to Berks County, and of these Dutchmen he had little good to say. However, one of them passed scrutiny and became the foreman of the jury. Wallis allowed that Christopher Schultz, "by religion a Swinefelder [*sic*]," was "a farmer and man of good abilities . . . & is thought will act from Judgment." There was finally a sizable contingent about whom Wallis had limited information or where the signals were conflicting. Take as an example this reading of the risks he perceived for a collateral relative of a later president whose name the prospective juror bore: "An illiterate man, and apt to be Influenced by the pleadings of Lawyers: apt to be intoxicated with Drink. A Quaker . . . . A Farmer." For whatever reason and on whichever party's initiative, Abraham Lincoln was excused from service.[49]

After the initial jury selection, the next steps were viewing the premises on Muncy Creek, located at a considerable distance northward from Reading, and then the trial itself, both originally anticipated for the autumn of 1772. Of the specified minimum of six veniremen to go on the view, each party was entitled to name half the total actually participating. Those who did view the premises and subsequently appeared "at calling the jury to try" were empanelled first, with the deficit in the twelve being made up from the remaining jurors who had qualified.[50] In the middle of October George

Nagel, the sheriff of Berks County, was ready to dispatch two separate groups of jurors and had, in fact, sent off the first group toward Muncy when he received a message from James Tilghman directing him to suspend the view. Tilghman had grudgingly consented to a postponement of the trial due to Wallis's illness. In a letter to Wallis on October 20 Nagel told him that he had just put an express messenger on the road to intercept the group of jurors on their way—"(if possible) to prevent their going and to save you Expences."[51]

The trial was rescheduled for the spring of 1773. Early in April James and Drinker entered in their accounts the sum of £24 paid Wallis for "Lawyers in the Country." Several witnesses were subpoenaed to appear and testify in Reading on May 19, 1773.[52] Yet only a month before the trial date, his partners in Philadelphia sent Wallis a disturbing letter. They had consulted Joseph Reed to determine whether that high-powered lawyer's calendar would permit him to attend the trial. Reed said that he was scheduled to attend court in Burlington, New Jersey, at about that time, a conflict that caused him concern because he realized, James and Drinker wrote, how "much dependence was placed on his serving thee." What may have particularly rattled Wallis was Reed's reported conclusion that "George Ross has taken some disgust to the cause and either would not serve thee in it or at best but with indifference." James and Drinker advised Wallis to sound out Ross on the strength of his commitment and "to consult thy Counsel here in time to be properly prepared for a matter of such consequence."[53]

"In about two weeks," Edmund Physick told Thomas Penn in a letter of May 1, 1773, "I shall go to Reading to attend the Cause with Saml Wallis for the Land at Munsey."[54] Lawyers and clients assembled in Reading that third week in May—only to discover that Wallis needed another continuance, on the ground, as he stated in his sworn affidavit, that he had been unable to obtain the presence of material witnesses "without whose Testimony he cannot safely proceed to Trial." The court records showed on May 20 a further adjournment: "Tryal put off on Motion and Affidavit of Defend Saml Wallis who is ordered by Rule of Court to pay the Costs of the Term." The records also confirmed the "same Jury & View to continue." This entry and a companion one in the distringas docket left no doubt that the trial would occur at the next term of court, that no new view would be held, and that the same struck jury would stay in place.[55] That none of this happened easily may be gathered from a letter that the son of James Tilghman sent to his cousin at the end of that same week: "Mr. Chew has been for this past week in Reading.

He went there to try a proprietary cause of great consequence. The dispute is with Samuel Wallace, who has very ingeniously contrived to cram about 3 times as much land in his survey, as he represented to the officers.... I am sure that that the Proprietors ought to pay Mr. Chew handsomely."[56]

The litigation would be a boon to more lawyers than Benjamin Chew, who, having resigned as attorney general in 1769, nevertheless remained a key member of the proprietors' legal team. In early October, Wallis began preparing in earnest for a trial that could no longer be put off. From Fort Augusta (now Sunbury), he wrote James and Drinker to ask them to track down the sheriff of the newly created Northumberland County, then in Philadelphia on business, and ensure that the sheriff serve subpoenas on five residents of that county to appear "as evidences in my cause." On October 15 he was in Princeton on his way to Elizabethtown "with an Intent to prevail," he wrote his partners in Philadelphia, "on the person which I mentioned to you to attend at Reading." He also had someone else targeted for a subpoena who, he informed James and Drinker, would be found at John Lukens's in Strawberry Alley in Philadelphia. James and Drinker complied with these requests, and new items of cost for the subpoenas were added to the ledger account.[57]

A full week before the trial was scheduled to start, Samuel Wallis arrived in Reading. His first concern, he confided to James and Drinker, was to determine what his opponents might be plotting. It caused him distress and suspicion in equal measure to find that "not a single man on the Jury list for the Tryal of my cause" had yet been summoned. The sheriff was considerably more relaxed on this score than Wallis, who "informed him that one of the Jurors who had attended the View was from home & that I did not chuse to go to Tryal without him & desired that he send for him—which he Refuses to do."[58] The overall impression gained from this correspondence is that, while he had his own retinue of lawyers, Wallis undertook most of the work in rounding up witnesses to support his position and indeed in framing the defense's trial strategy.[59]

The trial began on Wednesday, November 17, lasting eleven hours that day and ten hours the next. It took place in a town of about 1,200 inhabitants whose principal occupations, a jaundiced French observer noted twenty years later, seemed to be stirring up litigation and tavern keeping.[60] Standing in the center of the public square and one of the few brick buildings in Reading, the courthouse had been erected in 1762. During those two days of trial the courtroom space would have been jam-packed with lawyers, court officials, jurors, witnesses, and interested members of the general public, making it a

FIGURE 2: The old court house in Reading prior to its demolition in approximately 1841. Lithograph courtesy of the Historical Society of Pennsylvania.

challenge for the two justices presiding, Thomas Willing and John Lawrence, and their tipstaff to maintain order.[61]

A catalogued item in the manuscript collections of the Historical Society of Pennsylvania has thus far been largely overlooked. It is a contemporaneously prepared record of the trial in Reading. While there can be no question about the authenticity of the nineteen unnumbered pages, these trial notes leave us with several unresolved mysteries. The identity of the recorder is not apparent on the face of the document, although he is obviously a lawyer (or a lawyer-in-training), acting for the plaintiff, who composed specific retorts in the margins to the arguments of Wallis's counsel; the handwriting is hurried and sometimes difficult to decipher; the proceedings as reported seem, in the light of modern practice, occasionally out of sequence; and finally one searches in vain for any sign of the court's intervention, whether in ruling on motions or objections or in instructing the jury. Even so, these trial notes permit us as tardy observers to enter that courtroom in Reading in November 1773.[62]

The indispensable first requirement at the trial was for each party to establish its chain of title. That was a comparatively easy matter for the proprietors who traced title from the 1681 royal charter (a starting point that was admitted without proof) through a succession of Indian deeds to a warrant to survey dated November 24, 1768, issued to lay out the Manor of Muncy. When returned at the end of the year, the survey plotted 1,615 acres on Muncy Creek. In contrast, Wallis's counsel had a more difficult task, for ultimately Wallis had to derive title from the very source resisting his claim: the proprietors acting through their officers. George Ross felt compelled, therefore, to state for the record that the plaintiff had "no right to make the Survey, having before granted the Lands to Deft S. Wallis." He next proceeded to put in evidence the four patents delivered under the great seal of Pennsylvania which were traceable to the applications and orders entered prior to the New Purchase in the names of Bowyer Brooks, Robert Roberts, James Alexander, and Robert Whitehead for land then in Cumberland County.[63]

At this preliminary stage the plaintiff produced testimony that, as evidence of Wallis's fraudulent intent, he had attempted to convert the applications for an aggregate of a little over 700 acres to about 3,200 acres as surveyed on the ground. In rebuttal, counsel for the defendant maintained that the proprietors would suffer no harm for Wallis had committed to pay the going rate for such excess acreage. Edmund Physick interjected at that point to confirm that Wallis had made exactly that commitment at a "Meeting of Friends."[64]

In the testimonial give-and-take recorded by this unknown observer, one person is conspicuously absent. The rule of evidence, which began to change at the turn of the next century, prohibited any person from testifying who had a financial stake in the outcome. The defendant, Samuel Wallis, thus remained mute in the presence of the jury. Yet during these two long days of trial he listened, however uncomfortably, to statements repeatedly attributed to him, for there was no constraint on the kind of multiple hearsay which Physick, for example, volunteered.[65]

The parade of witnesses that both sides called focused attention on Wallis's surveys. These were completed and certified before the New Purchase and at a time when land on Muncy Creek was clearly out of bounds. The cumulative weight of the testimony, whether coming from the plaintiff's witnesses or Wallis's, supported only one conclusion, and that is that the proprietary officers accepted these surveys and issued the patents to Wallis believing that the land surveyed lay far to the southwestward, at the foot of Tussey Mountain

and within a few miles of the town of Bedford. Counsel for both parties could (and would) debate the finer points of the law, but the basic question was one of fact. Had Wallis induced this misconception and committed fraud, or, instead, had the proprietary officers carelessly failed to note a discrepancy apparent on the face of the documents Wallis submitted?

David Kennedy, a clerk in the land office, told of the flood of applications received on August 1, 1766, the first day under the application system for transacting business on the west side of the Susquehanna River. Later, while William Tilghman was conveniently absent at Fort Stanwix in the autumn of 1768, Wallis managed to overcome Tilghman's objections to three of his surveys and obtained patents for the disputed land. When Wallis appeared again in the land office in April 1770, seeking several patents including the fourth and last one he would rely on for Muncy, Kennedy cautioned him that the descriptions he offered were very vague. Kennedy said that he was under strict orders "not to give patents to the northwestward of Tussey's Mountain near the Old Purchase Line." While protesting that he "wished Mr. Tea had been more particular," Wallis assured Kennedy, by pointing to the Scull map on the wall, that the plotted parcels were well to the eastward. It was Kennedy's impression that, once the patents were issued, they "did not lie long in his office."[66]

The complaisant Richard Tea, the deputy surveyor for the area around Bedford, testified that his district was a full seventy miles from Muncy and that never once had he consciously returned surveys for Muncy. He took at his word his under deputy, Robert McKenzie, when the latter certified that the lands surveyed were at the foot of Tussey Mountain. As a proprietary surveyor since 1754, he was unable to recall any instance of granting lands out of a purchase from the Indians, and in the compressed reporting of his testimony, "would have cut his arm off before wd have returned them if thought out of the purchase."[67]

Robert McKenzie testified at length. He made a favorable impression on the reporter who wrote in the margin: "good Character . . . stands supported by all the Evidence. Young fellow having confidence, lyable to Imposition." In April or May 1768, Wallis came to Carlisle and asked Tea if McKenzie might accompany him on surveying work, which McKenzie did, verifying the content in acreage of surveys that Wallis handed to him. After that innocuous start, Wallis told him that he needed help on drafts of some surveys that Wallis had prepared, but as to which it would be "troublesome" to have an official surveyor run the lines and return the surveys. He offered to

pay McKenzie the same fees "as if [he] had gone on the ground." McKenzie consented, "having a good opinion of Wallis" and being assured by him that "the Land lay near the foot of Tussey's Mountain," where McKenzie had done field work before. Tea had no hesitancy, he said, in signing the surveys subsequently submitted to him.

In 1770, before he was compelled to leave Philadelphia because of the sudden illness of his wife, McKenzie gave Wallis other "rough drafts" prepared to Wallis's specifications. Wallis bundled up this material and McKenzie never saw it again; when he inquired, Wallis always had an evasive answer about the use he made of the drafts. Like Tea before him, he denied that he had ever surveyed out of the last purchase from the Indians, "nor gave directions to any other to do it." He acknowledged, however, that there might have been some doubt here and there when they were close to the line near Bedford. In Wallis's company he had seen Wallis concealing work done in advance for his benefit by marking boundary trees very low, about a foot off the ground, a practice that McKenzie disapproved of and never did himself.[68]

To the testimony of these three witnesses, as corroborated by others, Wallis and his counsel had no effective reply. The burden of their defense was to establish that the proprietors, having the power legally to do so, had previously granted land not purchased from the Indians, but the cases they pointed to where this may have happened were so different on their facts from the case before the jury that they had little persuasive value.[69] The testimony of one John Dallam, a witness the defense called to discredit McKenzie, was both casual in tone (he had accompanied McKenzie, he said, "as to a Frolick") and contradictory in content. A final witness for Wallis, Samuel Maclay, also a surveyor but with less suspect credentials, told the jury that it was not unusual for a warrant to move from one location where land could not be taken up because of a prior claim to another where no such interference existed. He, too, quickly admitted that, in his experience, this shifting of warrants to survey never occurred outside the deputy surveyor's district, much less beyond the line of the last purchase from the Indians. For all the good he did Wallis, Maclay might just as well have been the plaintiff's witness.[70]

This record does not disclose whether testimony unfolded in the now familiar question-answer format, with direct examination being followed by cross-examination and occasionally by rebuttal. Based on what is known of courtroom practice in the second half of the eighteenth century, the procedure was probably much more informal. Objections to the admissibility of

evidence were seldom made; counsel for each side jumped in and asked questions as the inspiration of the moment moved them to do so; and the jury's acknowledged competence to decide the controversy was much broader in scope than it would be today when judges alone rule on contested matters of law.[71] One aspect of these trial notes is, however, entirely recognizable: the arguments counsel resorted to in support of their clients' legal positions and the reliance placed on precedents, some of them admittedly stretched to meet the particular needs of advocacy.

Fully a quarter of this record, studded in the margin with citations to English legal cases and treatises, represents the kind of argument that one would now expect to encounter in lawyers' briefs. The proprietors cited chancery decisions in which the court, exercising its equitable powers, decreed transfers invalid that it found tainted with fraud, whereas Wallis's counsel went to the law side for authority emphasizing the inviolability of title after the instrument of transfer had been delivered. Bolstered by the presence of Benjamin Chew and James Tilghman, Edward Biddle nevertheless appears to have shouldered the trial responsibility for the plaintiff, including arguing his client's case. Whatever misgivings James and Drinker had in Philadelphia, George Ross stayed as lead counsel for Wallis in Reading, with Joseph Reed having a barely detectable cameo part to play.[72] On the other hand, when it came to argument, Wallis turned to James Wilson, who, at the beginning of a distinguished career as lawyer, statesman, and judge, had recently moved to Carlisle and was fast making his reputation on the circuit.[73]

When during the course of the trial were these arguments presented? Though the pages containing counsel's arguments appear first in the collection of trial notes, it is logical to suppose that these were submissions made to the court toward the end of the trial, perhaps to assist the presiding judges in instructing the jury. For one thing, there are repeated references in the arguments to the testimony of particular witnesses. For another, even though the boundary between issues of fact and issues of law was then a blurred one, counsel's learning would have been wasted on the jury. Would the members of the jury have seen, for example, any persuasive parallel between the dispute before them and the chancery case of 1682 which Edward Biddle thought compelling authority for the proprietors? In *Coleby v. Smith,* the lord chancellor had in effect cancelled a deed from Coleby's father in a sale fortified by the levy of a fine, a peculiar strategy incomprehensible to all but medieval lawyers that ought to have made the transfer of title virtually impregnable.

But the lord chancellor ruled that unscrupulous persons had persuaded the senior Coleby that a great match was in prospect and that "to qualify himself for the lady," he had to convert all the land he owned into cash at a steep discount.[74] Among other instances of imposition or fraud that Biddle worked into his argument was a chancery court refusal to accept as valid an absolute conveyance from a daughter to her father made for one particular purpose when the father afterwards used it for an entirely different purpose. What value could the jury have attached to the argued analogy between that decision on its facts and Wallis's procuring his patents for the land in Muncy from proprietary officers who, like the misled daughter, had a completely different use and destination in mind?[75]

Wallis's counsel had authorities of their own, of even greater age and obscurity. George Ross reached back to the early years of Queen Elizabeth's reign to find language, in the nature of a judicial aside, that would serve as the defense's mantra in this case: "For a deed is not a deed but to some end and effect, and to say that it is a deed and of no effect is a contrariety."[76] When it was James Wilson's turn to speak, and in spite of his career-long affection for ancient English precedents, he chose to focus on the factual record and the competing equitable claims of the litigants.[77]

Wilson conceded that Wallis's surveys were made for land out of the last purchase from the Indians, but they were signed, he emphasized, by returning officers knowing that fact or chargeable with such knowledge. Moreover, it was common practice, he argued, for applications that failed in one spot to be moved to another that was often a considerable distance away. Although McKenzie equivocated in his testimony, he acknowledged that some of the surveys may have been out of the purchase, and his knowledge should be imputed right up the line from Richard Tea, the deputy surveyor, to the proprietary officers who had commissioned the deputy surveyors and all in their employ. Wilson proceeded to turn the complaint upside down. With this evidence of an acquisition out of the purchase staring the surveyor general in the face, why should "Mr. Wallis suffer by the Surveyor Genl Negligence & Inattention"? Wilson paused for effect to intone a Latin maxim, "The law aids those who are vigilant, not those who sleep on their rights."[78]

This was the first attempt Wilson had ever heard of to set aside a patent in favor of a title commencing after the patent had been granted. It must be "carefully watched," for consider the possible consequences. If Wallis's title was upheld, the proprietors would receive all the money they were entitled to and suffer no harm; indeed, there would be the added benefit to them

of knowing that their officers would be encouraged henceforth to act with greater vigilance. But defeating Wallis's title would throw countless other titles into question whenever a variance from the original location was found to have occurred. "If a man [is] not secured by a patent, how long shall he bear in memory the facts on which it was founded?" Wilson asked. After all, the proprietary officers had exclusive custody of the vital evidence, which meant, as George Ross in his argument had the temerity to contend, that they could abscond to England with the relevant papers and cause a fatal failure of proof for someone in Wallis's unhappy position. Before recapitulating, Wilson resorted to an argument of a kind that has recurrent appeal to lawyers only. If heard by the members of the jury, it could have damaged his client's case in their eyes. "Suppose," he said, "every step attended with Imposition, yet better that Patents shall be supported, than this fraud [be] punished." To which the unidentified recorder keeping these trial notes added the pungent observation in the margin: "Mighty matter Patents now!"[79]

The jury promptly returned its verdict. Ten days later Edmund Physick wrote to Thomas Penn that, having returned from "the Trial of your cause against Saml Wallis who wanted to divest you of a valuable Tract of Land surveyed for you at Muncey by means of Patents most artfully obtained ... it gives me great pleasure to inform you that after a long Trial of two days the Jury gave a verdict in your Favour in half an hour after leaving the Barr."[80] According to the docket entry or postea, the twelve named jurors "upon their Oath & Affirmation respectively" found Samuel Wallis guilty of the trespass and ejectment and assessed "the damages of the same Timothy Peaceable by reason thereof to [be] six pence," plus another six pence for costs and charges.[81] If it was the jury's determination of fault that Physick took pleasure in reporting to Thomas Penn, the jury's award of nominal damages should have come as no great surprise to those who represented the proprietary interests. The trial notes show no effort by the plaintiff to prove actual damages in any measurable amount; the essential purpose in bringing suit had been, after all, to establish the proprietors' unassailable title to Muncy Manor, and such the jury verdict clearly confirmed.

As the participants in the trial gathered up their papers and dispersed, some of them to begin a long journey home, Samuel Wallis was not the first disappointed litigant to cling to one last hope. It is true that Justices Lawrence and Willing lacked the power to enter judgment on the spot; that formality would have to wait for the supreme court's full complement of four justices when they next assembled in Philadelphia.[82] Edmund Physick had

given no hint in his congratulatory letter to Thomas Penn of any impediment that might pose the slightest risk to the proprietors and the favorable outcome obtained in Reading. Even so, a week after the trial, Wallis was still chewing on the evidence that had counted against him, and especially McKenzie's testimony about the inducements he had received during the spring and summer of 1768. Wallis wrote to Wilson, who was back in Carlisle, and asked him to pursue a further inquiry with Messrs. Armstrong and Tea, the two deputy surveyors for Cumberland County. Wallis was sure that, if they cooperated, it "would make the Chain of Proof much Shorter . . . [in] a matter of great consequence to me." On the reverse of Wallis's letter, Wilson noted that he had spoken with Armstrong but that Armstrong's recollection was far from helpful to Wallis. The full court confirmed the jury's verdict and entered judgment for the plaintiff during its April term of 1774.[83]

This controversy had been, to borrow Samuel Wallis's phrase, "a matter of great consequence," not only for the plaintiff and the defendant but also for all those who would retain a memory of the dispute and its participants. For the chief proprietor, Thomas Penn, the outcome was not, however, in his immediate reckoning so famous a victory. Weighed down by illness, he replied through his secretary some months later to the good news Edmund Physick had passed along: "Mr. Penn is very glad to hear the Cause between him & Samuel Wallis, terminated in his favour, nor indeed could the Jury have done otherwise as it was a false Claim."[84] On the other hand, the proprietary officers who were gulled into delivering the contested patents to Wallis had to breathe a collective sigh of relief upon learning of the jury verdict.

Of no little consequence, one may conjecture, was the settlement of accounts among the various parties affected by the verdict and judgment. Had it not been for the fraud attributed to him, Wallis would have had the small consolation of recovering from the receiver general the purchase money he paid for the invalid patents. In any event, he would have had to make whole John Scudder, who decided to stay in Muncy and negotiate a separate purchase in Job's Discovery with the proprietary government, and Richard Stockdon, whose apprehensive wife probably persuaded him to leave.[85] Any settlement with James and Drinker was necessarily deferred. At the time of the trial they had more serious risks to assess as the agents for taxed tea about to arrive in the port of Philadelphia. Wallis remained in uneasy alliance with the two of them until the 1780s, and with Henry Drinker until Wallis died.[86]

Of perhaps the greatest consequence was the beginning of a long association between Wallis and James Wilson traceable to the trial in Reading. Wilson may have initially profited from his representation of Wallis, for it was reported that he impressed Benjamin Chew enough for Chew thereafter to send lucrative cases his way. Yet what began as an opportunity for Wilson to demonstrate his professional skills ended years later in leveraged land speculation that proved mutually ruinous for Wilson and his former client. At the very last, in their fortuitously coordinated deaths in 1798, they escaped imprisonment for debt—and, in Wilson's case, as a justice of the Supreme Court of the United States, an almost inevitable impeachment proceeding.[87]

Pennsylvania courts would twice return to the legal issue of consequence litigated in Reading. In 1796 two justices of the Pennsylvania Supreme Court in an ejectment action tried in Sunbury considered the question whether a 1755 patent on land within the New Purchase bound the proprietors after the Indians had released their title at the treaty of Fort Stanwix. In this instance the intrusion into the New Purchase territory was relatively slight and inadvertent. What's more, the claimant under the 1755 patent was the grandson of Conrad Weiser, whom the proprietors intended to reward for his services as an interpreter in negotiations with the Indians. But the court charged the jury that the patent was valid only "if the late proprietaries, or their officers, knew that the lands surveyed . . . lay out of the then Indian purchases, and granted them under full knowledge thereof." On the strength of that charge, Conrad Weiser's grandson lost.[88]

The Pennsylvania Supreme Court confronted the same issue again in 1813. This time the contested patent had been granted in 1775 for land reserved for the Indians beyond the western limit of the New Purchase. Over the impassioned protest of Justice Brackenridge, an eccentric from the western part of the state who regarded as "monstrous" William Penn's deference to the "Aborigines," his colleagues affirmed the trial court's judgment that the patent that was first in time was void. "We are not without authority for this opinion; for it was determined before the revolution in the case of *The Proprietaries v. Samuel Wallis*, that the patents were *void* which were issued for lands in the proprietary *manors*, surveyed contrary to standing instructions, and done in such a manner, that the secretary and the surveyor general were imposed on." So wrote Chief Justice William Tilghman, the former law student of Benjamin Chew and the son of the imposed-on secretary.[89]

NOTES

1. For their comments and suggestions at various stages in the preparation of this paper, I am grateful to Whitfield J. Bell, Jr., George Boudreau, Stanley N. Katz, Peter C. Mancall, Bruce H. Mann, William A. Pencak, Alfred W. Putnam, Jr., and Charles E. Shields, III.

   Pennsylvania Gazette, Dec. 13 and 27, 1770. "Proprietaries" and "proprietors" were used as interchangeable designations in eighteenth century Pennsylvania. The term "proprietors" will be used in this paper to denote the heirs of William Penn who, from time to time, held the exclusive right to the province of Pennsylvania.

2. Wallis was guilty of treason on several counts. Most damning of all, he acted as a paid intermediary between Benedict Arnold and Sir Henry Clinton, a role that remained undiscovered for more than a century and a half. Carl Van Doren found him out in the Clinton Papers at the Clements Library. Carl Van Doren, *Secret History of the American Revolution* (New York: The Viking Press, 1941): 217–20, 277–80, 411–13, 416–17; see also John Bakeless, *Turncoats, Traitors and Heroes* (Philadelphia: J. B. Lippincott Company, 1959): 294–302, 359–60.

3. Wallis operated in those "contested spaces" which, in a revisionist rejection of fixed boundaries for the frontier, constituted the multiple frontiers of eighteenth century America. Rather than use the word "frontier," British colonists referred to the "backcountry," or "quite literally the land behind them as they faced east toward Europe." Andrew R. L. Clayton and Fredricka J. Teute, eds., *Contact Points: American Frontiers from the Mohawk Valley to the Mississippi, 1750–1830* (Chapel Hill and London: University of North Carolina Press, 1998): 1–2, 32–33.

4. The limited materials available to document the work of courts prior to the Revolution and their scattered, incomplete condition have been cited as one reason for the unsatisfactory development of the legal history of colonial America. Stanley N. Katz, "The Problem of Colonial Legal History," in Jack P. Greene and J. R. Pole, eds., *Colonial British America: Essays in the New History of the Early Modern Era* (Baltimore: Johns Hopkins University Press, 1984): 468; cf. Bruce H. Mann, "The Death and Transfiguration of Early American Legal History," in Christopher L. Tomlins and Bruce H. Mann, eds., *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press, 2001): 443–44. Research in such materials can occasionally, however, produce a rewarding yield. See Lawrence M. Friedman, *A History of American Law*, 2d ed. (New York: Simon & Schuster, Inc., 1985): 102–4. Of the work of Pennsylvania's highest court in particular cases during the colonial period, and especially in the exercise of its trial or nisi prius jurisdiction, there is only fragmentary evidence in print. For the pre-Revolutionary period, there are fewer than three dozen decisions of Pennsylvania courts reported in cryptic and abbreviated form in the first volume of Alexander J. Dallas, ed., *Reports of the Cases Ruled and Adjudged in the Courts of Pennsylvania Before and Since the Revolution*, 4 vols. (Philadelphia, 1790–1808). Institutional studies of the Pennsylvania Provincial Supreme Court may be found in William H. Loyd, *The Early Courts of Pennsylvania* (Boston: The Boston Book Company, 1910); Frank M. Eastman, *Courts and Lawyers of Pennsylvania: A History, 1623–1923*, 4 vols. (New York: The American Historical Society, Inc., 1922); and G. S. Rowe, *Embattled Bench: The Pennsylvania Supreme Court and the Forging of a Democratic Society: 1684–1809* (Newark, Del.: University of Delaware Press, 1994).

5. Robert H. Barnes, comp., *Baltimore County Families* (Baltimore: Genealogical Publishing Co., Inc., 1989): 661; Minutes of Deer Creek Monthly Meeting, 2 Twelfth Month 1760, 30 Twelfth Month 1760, and 3 Second Month 1761. References to the records of Quaker meetings are to the microfilmed records at the Friends Historical Library at Swarthmore College, Swarthmore, Pa.; in all cases the minutes of the monthly meeting cited are those of the men's meeting. A glimpse of Wallis's youthful surroundings may be found in Samuel Mason, Jr., *Historical Sketches of Harford County, Maryland* (Lancaster, Pa.: Intelligencer Printing Co., 1940): 35–46.

6. In 1938, before Wallis's role as a traitor to the American cause had been disclosed, his extensive papers in the possession of the Wallis family in Muncy, Pa., were microfilmed, and a set of seven reels (hereafter cited as the Wallis Papers) was lodged at the Historical Society of Pennsylvania, Philadelphia, Pa. (hereafter, HSP). The thousands of items on these reels, appearing higgledy-piggledy, are often partially or wholly illegible. For Wallis's ventures as a failed merchant, see "Invoice of Sundry Goods shipt on board the Scooner Nancy John Goggins . . . Master for Quebeck . . . Consigned to Wallas & Heaton Merchants," dated "4 mo 11 1761," Wallis Papers, Reel 6; and the records of the Pennsylvania Assembly in *Pennsylvania Archives* (hereafter cited as *Pa. Archives*), ser. 8, 8 vols. (Harrisburg: State Bureau of Publications, 1931–1935), vols. 6 and 7. The opportunity under the best of circumstances for "upwardly mobile strivers" (read, more simply, "upstarts") to become successful Philadelphia merchants in the second half of the eighteenth century is comprehensively considered in Thomas M. Doerflinger, *A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia* (Chapel Hill and London: University of North Carolina Press, 1986): 11–17, 45–58. In the event Wallis's debut as an aspiring merchant was ill-timed; a general slump in trade hit Philadelphia's merchant community beginning in late 1760. Arthur L. Jensen, *The Maritime Commerce of Colonial Philadelphia* (Madison, Wis.: State Historical Society of Wisconsin, 1963): 119–22.

7. *Pa. Archives*, ser. 8, 6:5439–40, 5445–47, and 7:5523–25, 5583–84; *The Statutes at Large of Pennsylvania from 1682 to 1801*, James T. Mitchell and Henry Flanders, comps., 16 vols. (Harrisburg: Pennsylvania State Printer, 1896–1911), 6:335–39 ("An Act for the Relief of Samuel Wallis, a Prisoner in the Gaol of Philadelphia, with respect to the Imprisonment of his person," passed Mar. 23, 1764). There was no general debtor relief statute in Pennsylvania until 1785; even then, recourse to private enactments continued to be necessary for certain debtors. William Winslow Crosskey, *Politics and the Constitution in the History of the United States*, 2 vols. (Chicago: University of Chicago Press, 1953), 1:489. For a broader examination of the "law of failure" in the pre-Revolutionary period and the ad hoc nature of legislative relief granted imprisoned debtors, see Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge: Harvard University Press, 2002): 71–77.

8. "Memorandum of charges from a suit brought against me . . ." (n.d.), Wallis Papers, Reel 4. To establish the several family connections among the Chews and the Galloways in Maryland, see Burton Alva Konkle, *Benjamin Chew, 1722–1810* (Philadelphia: University of Pennsylvania Press, 1932): 6, 12–13, 56. Samuel Wallis's parents and grandparents came from this same Quaker community on the western shore of Chesapeake Bay below Annapolis. See marriage certificate of his parents in Indian Spring and West River Monthly Meetings, 23 Second Month 1730.

9. *Statutes at Large of Pennsylvania*, 6:336.

10. James and Drinker to Wallis, June 8, 1765, Wallis Collection, Muncy Historical Society, Muncy, Pa. (hereafter, MHS). For Wallis's career as a land speculator, see J. F. Meginness, *Otzinachson: A History of the West Branch Valley of the Susquehanna* (1889; reprint ed., Swengel, Pa.: Reiener Publications, 1968), 344–66; Charles Page Smith, *James Wilson: Founding Father, 1742–1798* (Chapel Hill: University of North Carolina Press, 1956): 361, 366–67, 389–90; Norman B. Wilkinson, *Land Policy and Speculation in Pennsylvania, 1779–1800* (New York: Arno Press, 1979): 71–81, 113–17, 247–49; and Peter C. Mancall, *Valley of Opportunity: Economic Culture along the Upper Susquehanna, 1700–1800* (Ithaca: Cornell University Press, 1991): 97–100, 183–85, 202–3. None of the foregoing has, however, focused on the early, crucial relationship between Wallis and James and Drinker. Biographical entries for Abel James and Henry Drinker separately appear in Whitfield J. Bell, Jr., *Patriot-Improvers: Biographical Sketches of Members of the American Philosophical Society*, 2 vols. to date (Philadelphia: American Philosophical Society, 1997): 2:5–9, 298–305.
11. *Pennsylvania Gazette*, June 17, 1765. The application system is described in Thomas Sergeant, *View of the Land Laws of Pennsylvania* (Philadelphia: James Kay, Jun. and Brother, and John I. Kay & Co., 1838): 55–60; James T. Lemon, *The Best Poor Man's Country: A Geographic Study of Early Southeastern Pennsylvania* (New York: W. W. Norton & Company, 1972), 57; and Donna Bingham Munger, *Pennsylvania Land Records: A History and Guide for Research* (Wilmington, Del.: Scholarly Resources, Inc., 1991): 106–7. On the legal definition of a patent, see Joel Jones, *A Syllabus of the Law of Land Office Titles In Pennsylvania* (Philadelphia: Henry Perkins, 1850): 19–23.
12. "Samuel Wallis and Company in account with James & Drinker," 1765–1776, Wallis Papers, Reel 5; indenture between Samuel Wallis and Abel James and Henry Drinker dated Sept. 23, 1766, and bond of Samuel Wallis to Abel James and Henry Drinker dated Sept. 23, 1766, Wallis Papers, Reel 7.
13. Lemon, *Best Poor Man's Country*, 76; Munger, *Pennsylvania Land Records*, 62; and Lorett Treese, *The Storm Gathering: The Penn Family and the American Revolution* (University Park, Pa.: The Pennsylvania State University Press, 1992): 104–6.
14. *Thompson v. Johnston*, 6 Binn. 68, 71 (1813). Citations to court decisions will be to the reports of the Pennsylvania Supreme Court (unless otherwise indicated) and follow the standard form for case citations.
15. In fact, very much to the contrary as time passed and Penn's vision of the peaceable kingdom gave way to exploitation of the Native Americans and their increasing disenchantment with the treaty process. The Walking Purchase of 1737 was just one notorious example of the Indians being taken for what they called "ye Running Walk." James H. Merrell, *Into the American Woods: Negotiators on the Pennsylvania Frontier* (New York: W. W. Norton & Company, 1999): 35–38, 253–301; see also Daniel K. Richter, *Facing East From Indian Country: A Native History of Early America* (Cambridge: Harvard University Press, 2001): 184–86, 199–216.
16. Wallis to James and Drinker, Nov. 14, 1766, Drinker Papers (Samuel Wallis correspondence folder), HSP. The trading ambitions westward of Baynton, Wharton, and Morgan (as the firm had been restructured at the time Wallis sent his letter) were on the grand scale, reaching across the Alleghenies to the Ohio country and the upper Mississippi River. Doerflinger, *A Vigorous Spirit of Enterprise*: 148–51.
17. Physick to Penn, Jan. 7, 1769, Penn-Physick Manuscripts (1769–1804), HSP (hereafter cited as PPM), vol. 3. For the treaty at Fort Stanwix, the most reliable recent account is in Mancall, *Valley of Opportunity*, 90–94; see also Treese, *Storm Gathering*: 105–8.
18. Meginness, *Otzinachson*, 344–45; T. Kenneth Wood, "Samuel Wallis—Pioneer Settler and Land Owner in Muncy Valley," *Now and Then* 6 (1940) (the journal of MHS): 250–54.

19. As if to illustrate their concerns, one of Wallis's associates was killed near Muncy Farm in September 1769 in what a witness swore was a hunting accident but looked suspiciously like a deliberate shooting. Meginness, *Otzinachson*: 349–51.
20. Will of Samuel Wallis, "of the City of Philadelphia in the Province of Pennsylvania," dated May 19, 1769, Wallis Papers, Reel 3. It appears that Wallis's signature was later obliterated or excised to invalidate the will. Wallis also provided in his will for three other silent partners: the children of his brother John, who had recently died; Joseph Jacobs, a wealthy saddler in Philadelphia; and the trustees of the creditors of James Steel (the trustees, in all likelihood, being James and Drinker). Wallis had an extensive and sometimes apparently independent relationship with Joseph Jacobs. See "Joseph Jacobs, Samuel Wallis & Company in acct. with Samuel Wallis," 1765–1770, Wallis Collection, MHS, and Jacobs Family Papers, HSP.
21. *Records of Pennsylvania Marriages Prior to 1810*, 2 vols. (Baltimore: Genealogical Publishing Company, 1968), 1:266, 125. As to the Hollingsworth family and its social position, see Bell, *Patriot-Improvers* ("Levi Hollingsworth"), 2:356–61; Mary Hollingsworth Jamar, comp., *Hollingsworth Family and Collateral Lines* (Philadelphia: Historical Publication Society, 1944); and J. Adger Stewart, comp., *Descendants of Valentine Hollingsworth, Sr.* (Louisville, Ky.: John P. Morton Company, 1925).
22. Minutes of Philadelphia Monthly Meeting (hereafter cited as PMM), 27 Seventh Month 1770, adjourned to 2 Eighth Month 1770. For Quaker defections to Anglicanism in the eighteenth century, see Frederick B. Tolles, *Meeting House and Counting House: The Quaker Merchants of Colonial Philadelphia, 1682–1763* (Chapel Hill: University of North Carolina Press, 1948): 139–43.
23. Minutes of PMM, 28 Twelfth Month 1770.
24. *Pennsylvania Gazette*, Dec. 13 and 27, 1770 (Tilghman notice), Dec. 20 and 27, 1770 (Wallis), Jan. 10, 1771 (Wallis), Jan. 17, 1771 (Tilghman), Jan. 24, 1771 (Wallis), Jan. 31, 1771 (Wallis), Mar. 21, 1771 (Tilghman), and May 9, 1771 (Wallis). Though the December notice and the January 17 reply purported to be the joint work of Tilghman and John Lukens, as surveyor general, Tilghman was obviously the sole author, as he implicitly conceded in his final message of March 21. With an occasional omission and not always the same prominent placement, these communications appeared in parallel editions of two other newspapers then in circulation in Philadelphia: the *Pennsylvania Journal and the Weekly Advertiser* and the *Pennsylvania Chronicle, and Universal Advertiser.*
25. *Pennsylvania Gazette*, Jan. 17 and 31, 1771.
26. Pursuant to the royal charter of 1681, Penn and his heirs were given the power to establish manors and manorial courts in Pennsylvania. They availed themselves of this feudal privilege to the extent of reserving title or "proprietary tenths" in one-tenth of the best land in the province. Sergeant, *View of Land Laws*: 195–97; Lemon, *Best Poor Man's Country*: 55–57; and Munger, *Pennsylvania Land Records*, 6: 23–26, 84–88. The Manor of Lowther, consisting of about 7,500 acres, is located and described in "Draughts of the Proprietary Manors in the Province of Pennsylvania," *Pa. Archives*, ser. 3 (Harrisburg: Pennsylvania State Printer, 1894), vol. 4, and in George P. Donehoo, ed., *Pennsylvania: A History*, 4 vols. (New York and Chicago: Lewis Historical Publishing Company, Inc., 1926), 1:429. Muncy Manor is described in the same volume of *Pa. Archives*, and in several surveys or drafts that appear in the Wallis Papers, Reel 3, including one certified by Benjamin Jacobs under date of April 24, 1773, showing "the Several Tracts of Land claimed by Samuel Wallis as they interfere with the said Propprietary Mannor [*sic*]."

27. *Pennsylvania Gazette*, Mar. 21, 1771.
28. Ibid., May 9, 1771. To make his peace with the meeting, Wallis delivered a document dated September 27, 1771, in which he acknowledged his missteps, including "having purchased some lands contrary to Equitable Regulation of Our First Proprietor, and also the uniform Advice of Friends in that case, before they were purchased of the Indians, which Act I reflect on with Sorrow and Regret." PMM, Miscellaneous Papers: 1768–1797.
29. Physick to Thomas Penn, June 11, 1770, PPM, vol. 3. As a member of the American Philosophical Society, Physick's biographical sketch appears in Bell, *Patriot-Improvers*, 1:214–19.
30. Physick to Thomas Penn, Sept. 28, 1770, PPM, vol. 3.
31. Physick to Thomas Penn, Mar. 6, 1771, ibid. John Penn, as governor, had earlier authorized the payment of the retaining fee to Biddle. John Penn to Edmund Physick, Jan. 21, 1771, PPM, vol. 7. A biographical entry for Biddle appears in Bell, *Patriot-Improvers*, 2:280–83.
32. Penn to Edmund Physick, Nov. 28, 1770, Thomas Penn Letterbook, 1769–1775, HSP, vol. 10; Physick to Thomas Penn, Mar. 6, 1771, PPM, vol. 3. Nicholas Scull was the surveyor general of Pennsylvania and the author of a map of the province published in 1759. His grandson William Scull advertised his intention to improve on his grandfather's work and, in doing so, "to lay down the back country, now lately purchased of the Indians." *Pennsylvania Gazette*, Feb. 2, 1769. It was undoubtedly this advertisement which caught Thomas Penn's eye and led to his applying to Physick for copies of the new map. When he eventually saw the map, Penn could have been disconcerted by William Scull's boxed acknowledgment, in the upper right-hand corner, of the assistance he had received from Richard Tea and Samuel Wallis, among several named surveyors.
33. The embarrassment is palpable in a report that Edmund Physick gave to Thomas Penn in which Physick quoted Wallis as saying that, once patents were sealed and delivered, "we [the proprietary officers] might go Whistle." Physick to Penn, June 11, 1770, PPM, vol. 3.
34. Bond of Samuel Wallis, Sept. 23, 1766, Wallis Papers, Reel 7; "Samuel Wallis and Company in account with James & Drinker," 1765–1776, entries on Sept. 22, Oct. 8 and 15, and Nov. 25, 1768, and Apr. 9 and 13, 1770, Wallis Papers, Reel 5.
35. *Pennsylvania Gazette*, Jan. 10 and 24, 1771.
36. Physick to Thomas Penn, June 11, 1770, PPM, vol. 3. Thomas Penn expressed his appreciation that Galloway was prepared to act "a fair part in the case." Penn to Physick, Nov. 28, 1770, Thomas Penn Letterbook, 1769–1775, HSP, vol. 10.
37. Galloway's manuscript opinion dated March 21, 1771, appears in Wallis Papers, Reel 6, and also in full printed text in Meginness, *Otzinachson*: 374–76.
38. For Ross's opinion dated March 28, 1771, see Wallis Papers, Reel 6.
39. *Morris's Lessee v. Vanderen*, 1 Dall. 64, 67 (1782).
40. The evolution of ejectment as an adaptable fiction is traced in England in J. H. Baker, *An Introduction to English Legal History*, 3d ed. (London: Butterworths, 1990), 341–48, and in America in Friedman, *History of American Law*, 22–23. See also Issac 'Espinasse, *A Digest of the Law of Actions at Nisi Prius*, 2 vols. (Philadelphia: J. Crukshank and W. Young, 1791), 2:126; Francis Buller, *An Introduction to the Law, Relative to Trials at Nisi Prius*, 7th ed. Richard Whalley Bridgman (London: S. Brooke, 1817): 95a; and Eric Kades, "History and Interpretation of the Great Case of *Johnson v. M'Intosh*," *Law and History Review* 19 (2001), 100–1. Pennsylvania practice of that period appears, however, to have

permitted the real party or parties in interest to be named on the defendant's side—thus avoiding a second contrived tenancy.

41. Appearance and Continuance Docket, Supreme Court, Eastern District, 1772–1774, April Term, 1772, Record Group 33, Pennsylvania State Archives, Harrisburg, Pa. (hereafter cited as PSA). The alternative designation of "Job's Discovery" was due to the site's recommendation by a friendly Delaware Indian guide, Job Chilloway. John F. Meginness, *History of Lycoming County, Pennsylvania* (Chicago: Brown, Kunk & Co., 1892): 54–56. Robert Lettis Hooper, who would become a long-time associate of Wallis's, recruited in New Jersey both Scudder and Stockdon (a variant and more likely spelling is Stockton) as prospective settlers. Hooper to Wallis, Jan. 20, 1770, Wallis Papers, Reel 6.
42. Nisi Prius Records and Postea, Supreme Court, Berks County, 1764–1775 (part 2), Record Group 33, PSA; Appearance and Continuance Docket, April Term, 1772, Record Group 33, PSA. No deviation from this prescribed course of pleading in ejectment was permitted. *Wilson's Lessee v. Campbell*, 1 Dall. 126 (1785); 'Espinasse, *Digest of the Law*, 2:161.
43. In theory the court lacked original jurisdiction in almost all cases. See *Commonwealth ex rel. O'Hara v. Smith*, 4 Binn. 117: 121–22 (1811); Eastman, *Courts and Lawyers of Pennsylvania*, 1:241–46.
44. Muncy became part of Northumberland County in 1792 and finally of Lycoming county in 1795.
45. Biddle to Stockdon, Aug. 22, 1772, Wallis Papers, Reel 6.
46. Prospective jurors are still often referred to as "veniremen" because of the ancient judicial writ *venire facias* which directed the sheriff literally to cause or make a jury to come.
47. On the emergence of different types of special or struck juries in England during the seventeenth and eighteenth centuries, see James C. Oldham, "The Origins of the Special Jury," *University of Chicago Law Review* 50 (1983): 137–40, 176–210; see also Morton J. Horowitz, *The Transformation of American Law, 1780–1860* (Cambridge: Harvard University Press, 1977): 155–59 (for the selection and use of struck juries of merchants in New York State). The 1785 statute: *Statutes at Large of Pennsylvania*, 11:486–94. The Pennsylvania practice of utilizing a struck jury, as distinguished from a special jury of experts or highly qualified persons, is confirmed in *Lessee of Neff v. Neff*, 1 Binn. 350 (1808); *Long, Adm'r v. Spencer & Co.*, 78 Pa. 303 (1875); and Francis J. Troubat and William W. Haly, *Notes on Practice . . . in Civil Actions in the Supreme Court of Pennsylvania . . .* (Philadelphia: R. Desilver, 1825): 174–76.
48. (n.d.) Wallis Papers, Reel 6; Meginness, *Otzinachson*: 377–79.
49. The members of the jury and Schultz as the foreman are identified in Nisi Prius Records and Postea, Berks County, 1764–1775 (part 2), Record Group 33, PSA. For background on Christopher Schultz, a prominent Schwenkfelder minister, and on this Abraham Lincoln, who was much more respectable than Wallis gave him credit for, see Samuel Kriebel Brecht, ed., *The Genealogical Records of the Schwenkfelder Families*, 2 vols. (New York: Rand McNally & Company, 1923), 2:964–68, and Marion Dexter Learned, *Abraham Lincoln, An American Migration* (Philadelphia: W. J. Campbell, 1909): 81–93.
50. As to the requirements for a view, see *Schwenk v. Umsted*, 6 Serg. & Rawle 351 (1821), and Troubat and Haly, *Notes on Practice*, 176–77.
51. James Tilghman to _____, Oct. 18, 1772, Wallis Papers, Reel 4; Nagel to Wallis, Oct. 20, 1772, Wallis Papers, Reel 6.
52. "Samuel Wallis and Company in account with James & Drinker," entries on April 5 and 17, 1773, Wallis Papers, Reel 5.

53. James and Drinker to Wallis, Apr. 19, 1773, Wallis Papers, Reel 7.
54. Physick to Penn, May 1, 1773, Penn Manuscripts, Official Correspondence, HSP, vol. 11 (1772–1775).
55. Appearance and Continuance Docket, Supreme Court, Eastern District, 1772–1774, April Term, 1773, Record Group 33, PSA; Nisi Prius Records and Postea, 1764–1775, Berks County (part 2), Record Group 33, PSA (which includes the affidavit Wallis "Affirmed in open Court at nisi prius in Reading 20th May 1773," setting forth the need to call absent material witnesses).
56. Quoted in Konkle, *Benjamin Chew*: 131.
57. Wallis to James and Drinker, Oct. 2 and 15, 1773, Drinker Papers (Samuel Wallis correspondence folder), HSP; "Samuel Wallis and Company in account with James & Drinker," entry on Oct. 16, 1773, Wallis Papers, Reel 5.
58. Wallis to James and Drinker, Nov. 10, 1773, Drinker Papers (Samuel Wallis correspondence folder), HSP.
59. In addition to the foregoing paper trail, there are certified copies of warrants and surveys in the Wallis Papers pertaining to Wallis's defense, as well as memoranda he prepared on matters of proof at trial. See especially Wallis Papers, Reels 6 and 7.
60. The jury's return of verdict dated November 18, 1773, gives the time spent at each day of trial. Miscelleaneous Manuscripts, Berks and Montgomery counties, 1693–1869, HSP. "[L]es *gens de loi et les teneurs de tavernes forment la plus grande partie de la population de cette ville*," wrote the Duc de la Rochefoucauld-Liancourt in *Voyage dans les États-Unis d'Amérique, fait en 1795, 1796 et 1797*, 8 vols. (Paris, 1799), 1:43. A more nuanced appraisal of the industry of lawyers and litigants in the Reading area during the late colonial period (but excluding the nisi prius jurisdiction of the provincial supreme court and land litigation entirely) is provided by Laura L. Becker, "The People and the System: Legal Activities in a Colonial Pennsylvania Town," *Pennsylvania Magazine of History and Biography* 105 (1981): 135–49.
61. Cyrus T. Fox, ed., *Reading and Berks County, Pennsylvania: A History*, 3 vols. (New York: Lewis Historical Publishing Company, Inc., 1923), 1:23–24. To the calculation of those whose presence was required, add the notoriety of this case and the sense of theater that such trials produced, especially on the frontier, and the numbers mount up to make an uncomfortably crowded courtroom. See Loyd, *Early Courts of Pennsylvania*, 151, and Lemon, *Best Poor Man's Country*, 137. Both Willing and Lawrence were trained in the law, although, in a long life, Willing would make his mark as a prominent merchant and banker. Burton Alva Konkle, *Thomas Willing and the First American Financial System* (Philadelphia: University of Pennsylvania Press, 1937): 8–12, 52–64.
62. Trial Notes, "Proprietaries v. Wallis" (n.d.) (containing three additional blank pages), Penn Papers, HSP (hereafter cited as N. T., with bracketed page numbers inserted to correspond with the manuscript sequence). Based on a handwriting comparison and the stylistic quality of the reporter's asides, James Tilghman seems the most likely candidate as author. A companion undated manuscript, in a different hand and consisting of fourteen numbered pages, sets out a detailed analysis of the case that the proprietors planned to develop against Wallis. "Propt. agt. Sam Wallis," Penn Papers, HSP (hereafter cited as Proprietors' Case).
63. N. T., [p. 7]. Significantly, between the statement of his case for Galloway and Ross to consider in their opinions of 1771 and the submission of proof at trial, Wallis and his lawyers had discarded, as a basis for the title claim at Muncy, a warrant issued in the name of Dennis Mullin and the related patent granted Wallis. Mullin's warrant had the fatal defect of referring to an adjoining location that

indisputably put the land applied for in the neighborhood of Bedford. This warrant had the further awkward potential of linking to this specific location the other applications Wallis relied on. See Proprietors' Case: 10–14.

64. N. T., [8–9].
65. For these contradictory evidentiary rules, see Friedman, *History of American Law*: 152–54; *Baker, English Legal History*: 109–10; *Respublica v. Keating*, 1 Dall. 110 (Phila. Oyer and Terminer, 1784); *Respublica v. Ross*, 2 Yeates 1 (1795); and *Peterson v. Willing*, 3 Dall. 506 (1799).
66. N. T., [12–13]. See also Proprietors' Case: 7–8. It was Nicholas Scull's map of 1759 that hung on the wall of the land office.
67. N. T., [13]. The biographer of a deputy surveyor also working in Cumberland County at that time thought Tea "incompetent or careless, or both," whose surveys "caused considerable litigation." Burton Alva Konkle, *The Life and Times of Thomas Smith, 1745–1809* (Philadelphia: Campion & Company, 1904), 36n.
68. N. T., [13–15]. McKenzie's testimony is entirely consistent with a letter of wounded outrage he sent to Wallis three years earlier, close to the events in question. McKenzie to Wallis, July 9, 1770, Wallis Papers, Reel 1. "McKinney" is a variant spelling of the surname, in the trial notes and elsewhere.
69. N. T., [9–10, 19].
70. N. T., [18–19]. Dallam came from the Deer Creek area in Maryland and had long-standing connections with Wallis and his family. Meginness, *Otzinachson*, 349–50; and Alice L. Beard, comp., *Births, Deaths, and Marriages of the Nottingham Quakers, 1680–1889* (Westminster, Md.: Family Line Publications, 1996), 141. As to the not uncommon, if sometimes abused, practice of shifting or vacating warrants to which Maclay testified, see *Funston v. M'Mahon*, 2 Yeates 245 (1797); *Campbell v. Galbreath*, 1 Watts 70, 96 (1832); and Jones, *Law of Land Office Titles*: 29–31.
71. Friedman, *History of American Law*, 152; Matthew P. Harrington, "The Law-Finding Function of the American Jury," 1999 *Wisconsin Law Review*: 377, 387–90; but see the categorical pronouncement of the Pennsylvania Provincial Supreme Court in *Hurst v. Dippo*, 1 Dall. 20, 21 (1774): "It is a settled rule, that courts determine law; a jury facts. Upon which maxim, every security depends in an English country."
72. N. T., [1–6, 11].
73. At least once before the trial began in Reading, Wallis had met with Wilson to discuss his legal position. Wallis to Wilson, Oct. 25, 1773, Gratz Collection, HSP. Ross and Wilson had formed a close friendship in repeated courtroom encounters on the Pennsylvania frontier. They were also connected by marriage: Ross's sister was married to Mark Bird, the brother of Wilson's wife. Both signers of the Declaration of Independence, Wilson and Ross would later incur patriot wrath for defending those accused of Tory sympathies or of actively collaborating with the enemy. Smith, *James Wilson*: 30, 107, 118–22.
74. N. T., [1]. *Coleby v. Smith*, 1 Vern. 205, 23 Eng. Rep. 416 (Ch. 1683). Wilson argued that the chancellor granted relief in this case because "the old man [was] in his dotage." N.T., [p. 3].
75. N. T., [1]. *Young v. Peachy*, 2 Atk. 254, 257, 26 Eng. Rep. 557, 558 (Ch. 1741).
76. N. T., [1]. *Sharington v. Shotton*, 1 Plowd. 298, 308, 75 Eng. Rep. 454, 469 (Q.B. 1566).
77. N. T., [2–3]. Wilson's style and annotated learning are on full display in his law lectures in Robert Green McCloskey, ed., *The Works of James Wilson*, 2 vols. (Cambridge: Harvard University Press, 1967).

78. N. T., [2–3]. Either Wilson or the recording clerk may have taken some liberties with Justinian's maxim in rendering it thus: "*vigilantibus non dormientibus fit lex.*"
79. N. T., [3–4].
80. Physick to Penn, Nov. 27, 1773, PPM, vol. 3.
81. Nisi Prius Records and Postea, 1764–1775, Berks county (part 2), Record Group 33, PSA; and see also jury's return of verdict, Nov. 18, 1773, Miscellaneous Manuscripts, Berks and Montgomery County, 1693–1869, HSP.
82. On the inability of nisi prius judges to enter judgment, see Loyd, *Early Courts of Pennsylvania*: 135–36; and Baker, *English Legal History*: 155–56.
83. Wallis to Wilson, Nov. 26, 1773 (Wilson's note on reverse, Dec. 24, 1773), Wilson Papers, HSP, vol. 6. Appearance and Continuance Docket, Supreme Court, Eastern District, 1772–1774, April Term, 1774, PSA (judgment entered for plaintiff on Apr. 30, 1774).
84. "P. U." [Peter Upsdell] to Edmund Physick, Feb. 8, 1774, Thomas Penn Letterbook, 1769–1775, vol. 10. Safeguarding title to the manor lands would become a matter of even greater consequence to the Penn family: under the Divestment Act of 1779 the Penns were permitted to retain "all lands called and known by the name of the Proprietary Tenths or Manors" and established as such prior to July 4, 1776. *Statutes at Large of Pennsylvania,* 10:36 (passed Nov. 27, 1779). In *Kirk v. Smith ex dem. Penn*, 22 U.S. 241 (1824), Chief Justice John Marshall gave a full, although, on the facts of the case, not entirely persuasive, exposition of the Penns' reserved rights in manor lands.
85. Meginness, *Otzinachson*: 373, 459–60, 462. Pending the outcome of these negotiations, Scudder entered into a year's lease "for the plantation whereon I now dwell." "Lease from ye Proprietary agents to John Scudder for one year," dated July 9, 1774, Penn Manuscripts, Warrants and Surveys (large folio), HSP. According to Wallis's agent, Stockdon's wife "dreads the Indians." Robert Lettis Hooper to Wallis, Jan. 20, 1770, Wallis Papers, Reel 6.
86. For James and Drinker under fire as agents for taxed tea, see Treese, *The Storm Gathering*: 125–26; and Jensen, *Maritime Commerce of Colonial Philadelphia*: 199–207. Evidence of the attempt of Wallis and his two Philadelphia partners "to reduce the Concerns they have been connected in to a narrow Compass" is found in "State of Concern in Lands...," Dec. 24, 1787, and articles of agreement between Samuel Wallis and Abel James and Henry Drinker, Jan. 5, 1788, both in Wallis Papers, Reel 7. As for the later stages of the Wallis-Drinker relationship, see Meginness, *Otzinachson*: 359–60, and Wilkinson, *Land Policy and Speculation*: 248.
87. See John Sanderson, *Biography of the Signers to the Declaration of Independence*, 5 vols., rev. 2d ed. (Philadelphia: R. W. Pomeroy, 1828), 3:261 (for Chew's reported reaction to Wilson's advocacy); Smith, *James Wilson:* 376–90; and David W. Maxey, "The Translation of James Wilson," 1990 *Journal of Supreme Court History*: 29–32. Wallis died in Philadelphia on October 14, 1798, a victim of yellow fever, after making a trip south to Edenton, North Carolina, in a desperate attempt to confer with Wilson who, Wallis discovered upon his arrival there, had died several weeks before.
88. *Lessee of Weiser v. Moody*, 2 Yeates 127 (1796).
89. *Thompson v. Johnston*, 6 Binn. 68, 71, 77 (1813); see also *Lessee of Kyle v. White*, 1 Binn. 246, 247–48 (1808). Horace Binney, "An Eulogium upon the Hon. William Tilghman, Late Chief Justice of Pennsylvania," as published in the Pennsylvania Supreme Court reports, 16 Serg. & Rawle 439, 440 (1827).