

and therefore prayed, that he might be admitted to appear so as to become a party for the purpose of prosecuting an appeal.

KILTY, C., 13th July, 1812.—The Chancellor has considered the within petition, and is of opinion, that the prayer thereof, to admit the petitioner to appear, ought not to be granted.

Nathan Waters nevertheless appealed, gave bond with sureties which was approved. And, at June Term, 1818, of the Court of Appeals, the decree was affirmed.

The trustee appointed to make the sale, reported, that he had, on the 23d of November, 1818, with the consent of the possessors, sold the whole of the lands lying in Montgomery County which had been conveyed by the late Charles Penn, Sen'r; and that the whole of the lands lying in Anne Arundel County which had been conveyed to the defendant, Nathan Waters, he had sold to James Ferree. The aggregate amount of sales being \$10,711.50. The usual order giving notice, having been published, and no cause having been shewn to the contrary, these sales were, on the 26th of January, 1819, absolutely ratified and confirmed.

36 *The auditor on the 26th of February, 1819, reported, that he had examined the proceedings, and from them had stated an account between the estates of Charles Penn, Sen'r, deceased, and Nathan Waters, and the trustee, in which the proceeds of each estate were applied to the payment of one-half of the complainant's claim and costs, and its proportion of the trustee's allowance for commission and expenses; and the balances respectively were made payable to the said Nathan Waters, and to those entitled to claim under the said Charles Penn, Sen'r, deceased. The auditor further reported, that his impression was, that the surviving grantees of Charles Penn, Sen'r, were entitled to the balance of his estate in proportion to the quantity of land held by each in virtue of his several deeds. But, it not appearing which of his two children, Charles Penn, Jun'r, and William Penn, survived the other, he had not been able to make the distribution accordingly.

From this account, stated by the auditor, as of the 23d of November, 1818, being the day of the sales, it appeared, that the amount of the sales of Penn's estate was \$4,211.50; that the amount of the sales of Waters' estate was \$6,500; and that the amount of the plaintiff's claim, with interest up to that time, was \$4,968.43; leaving a surplus of the proceeds of the sales, after deducting all commissions and costs, of \$1,306.4½, to be distributed among the grantees of Charles Penn, Sen'r, deceased; and, the sum of \$3,515.6½, which was awarded to the defendant, Nathan Waters.