

manner. The application of the proceeds under the order of March, 1819, (as to the petitioner and C. Gassaway's executors,) to be suspended till further order. The order to be made on the above petition, (by Gassaway's executors,) will depend on the decision on the petition filed by J. Hoyer.

In pursuance of this order, the auditor reported, on the 6th of February, 1821, that the petitioners, Hoyer and Darne, had appeared before him, and come to an agreement, according to which he had made a dividend of the amount allowed to the plaintiffs, between them, awarding to Hoyer the sum agreed upon; which report of the auditor was immediately confirmed.

The defendant, William G. Penn, filed two petitions, in which he stated, that he was interested as a purchaser of a part of the lands \* in Montgomery County; and also as one of the legal  
**38** representatives of his late father, Charles Penn, Sen'r; among whom it appeared, that there was a large surplus to be distributed. Whereupon he prayed, that the surplus might be distributed; and, that the share due to him might be deducted from the purchase money he had stipulated to pay, &c.

JOHNSON, C., 23rd January, 1823.—I do not perceive by the proceedings, that the surplus ever has been divided. The auditor's report of the 26th of February, 1819, makes a surplus of \$1,306.4½ to be distributed among the grantees of Charles Penn, Sen'r, deceased; but, who they are, or what proportion each is entitled to receive, don't appear.

The exhibits filed with the petition of William G. Penn are too informal, and some of them want even the appearance of proof. An order, such as requested by the petitioner, don't appear, at present, proper to pass. But on application, an order may be obtained for the auditor to state who are entitled to the surplus and the proportion of each; and then, on the petitioner obtaining their receipts to the trustee, given in conformity with the Act of 1816, ch. 134, the trustees will be directed to execute a deed. In the meantime, to prevent the petitioner, (who I presume is entitled to the whole surplus,) from being compelled to pay money to the trustee, that he may hereafter plainly appear entitled to, an order may pass directing the trustee to suspend collecting that sum, with the interest, until further order.

Ordered, that the auditor state an account in which he will designate who, and in what proportion, are entitled to the surplus money mentioned in his report of the 26th of February, 1819, and report the same. The report to be made from such evidence as is in the case; and from such as may be laid before him. As the petitioner's debt is suspended, and the time will not expire perhaps before the