

report of the auditor, it is thought premature to act on the latter part of the petition.

On the same day the auditor made a report, in which he says, that it appearing now by the deposition of Adam Darby, filed yesterday, that William Penn survived Charles Penn, Jun'r, he had, in obedience to the order of to-day, and in conformity with his report of the 26th February, 1819, stated the within account with the trustee, for so much of the proceeds of the said estate, as by the account then reported, was reserved for distribution among * the grantees of the said Charles Penn, Sen'r. The nett sum distributed, he had first apportioned to the lands **39** conveyed by the deceased, and sold by the trustee, according to the sums raised by the several parcels; and then distributed each portion, among the surviving grantees of each parcel respectively; the deceased's deeds having made them joint tenants thereof. This report was, by an order of the 29th of January, 1823, confirmed, and the proceeds directed to be applied accordingly.

The trustee represented to the Chancellor, that Benny Penn, had now assigned the whole of the land which he had purchased, to Lyde Griffith, who was his surety in the bond, given to secure the payment of the purchase money; that the land having sold for more than the debt due, a portion of the surplus was to go to Benny Penn which sum Griffith wished not to be compelled to pay to the trustee, or to bring into Court. Whereupon the trustee prayed the direction of the Court.

JOHNSON, C., 24th April, 1823.—On examining the assignment from Benny Penn to Lyde Griffith, dated the 7th July, 1820, I perceive that Griffith is to pay the full purchase money and interest due thereon, before the trustee is to execute a deed. By the terms of the original decree, the trustee is restrained from giving a deed until the whole purchase money is paid; and therefore, without a special order to the contrary, must act accordingly. Griffith may have not only purchased the land from Penn, but at the time, it may have been agreed, that he was to have all the interest Penn had in the estate; if so, and Penn, and himself will join in an application, the sum due to Penn may, by an order, be placed to the credit of Griffith; and a deed directed on the trustee's receiving the balance; otherwise, in the language of the assignment, he must pay the full purchase money and interest.

After which, Benny Penn again moved to obtain further instruction as to the distribution of the proceeds and the amount to be paid by Griffith, &c.