

in Montgomery county; and also as one of the legal 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.

23d January, 1823.—JOHNSON, *Chancellor*.—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 \$1306 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 trustee will be directed to execute a deed. In the mean time, 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 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