sale of the house and lot. The other creditors resisted the claim, as forming no demand on the estate; and insisted, Thompson's remedy extended only to the property improved and fixed with the lien, by the decree of the supreme court. But the circuit court overruled the exception, and adjudged that Thompson's administrator should come in for an equal dividend with the general creditors. From this order, the creditors appealed.

Thompson, by his bill to subject the house and lot, claimed a priority of lien, and had it allowed to him, in exclusion of the general creditors; he proceeded against the thing, and did not set up any personal demand extending beyond the lien, against the other estate of the King; and we are clearly of opinion, none exists. And therefore order, that so much of the proceeding in the circuit court, as allowed the administrator of Thompson to come in with the general creditors of King, to receive a dividend founded on said claim, be reversed; and that the cause be remanded for further proceedings.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, *holden [*132
in and for the county of Washington, and was argued by counsel: On consideration whereof, it is adjudged and decreed by this court, that so much of the decree of the said circuit court in this cause, as allowed the administrator of Thompson to come in with the general creditors of King, to receive a dividend, founded on his claim, be and the same is hereby reversed, with costs; and that this cause be and the same is hereby remanded to the said circuit court, for further proceedings to be had therein, in conformity to the opinion of this court.

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*United States, Appellants, *v.* The Heirs of F. M. Arredondo, [*133
and others, Appellees.

Florida land-claims.

A concession of 38,000 acres of land was made in 1817, by the governor of East Florida, to F. M. Arredondo, in consideration of services to the crown of Spain; the petition to the governor, asking for the grant, described the situation of the land; and asked, as the survey could not be made, for want of surveyors, and the surveyor appointed by the government, having other occupations, could not attend, that the issuing of the title should be suspended, until the plot of the land could be obtained; but that in the meantime, the decree of the governor on the petition should serve the petitioner as the title; to this application, the assent of the governor was given, by a decree ordering a concession in conformity with the petition. No survey was made under the concession, while Florida remained under the dominion of Spain, nor at any time after the cession of the territory to the United States. The court held, that want of a survey does not interfere with the title of a grantee; the land granted must be taken, as near as may be, in the place described in the petition, and cannot be taken elsewhere; and if it cannot be found there, the grantee has no claim to an equivalent; if it shall be found to interfere with previous grants to third persons, the concession will be lessened in quantity, according to the extent of the rights of third persons; and an equivalent for such diminution cannot be surveyed elsewhere.

The acts of congress for ascertaining claims and titles to lands in Florida, whilst they recognise patents, grants, concessions, or orders of survey, as evidence of title, when lawfully made, do not permit, in case of a deficiency in the quantity, from any cause whatever, the survey to be extended on other land.

Appeal from the Superior Court of East Florida.

This case was submitted to the court by *Grundy*, the Attorney-General of the United States.

Wayne, Justice, delivered the opinion of the court.—This is an appeal from the superior court of East Florida, which confirmed the claim of the appellees to a cession or grant of land, made by the governor of Florida to Fernando de la Maza Arredondo. The concession was made on the 24th March 1817, for 38,000 acres of land, in absolute property, without prejudice to a third party, situated on the two banks of a stream which enters the Suwanee river, called Alligator creek, beginning at about seven miles west of an Indian town, called Alligatortown, situated north-westwardly about forty miles distant from Payrestown, and about eighty miles from Buena Vesta, which parts of the country are known under the name of Alachua.

In the petition for this concession, the petitioner, in consideration that the situation and then state of the province did not permit the survey and demarcation of the tract to be made, and also the survey could not be made for want of a surveyor (the surveyor appointed by the government having other occupations, which prevent him from repairing to that part of the province), asks the governor to suspend the issuing of the title to the property, until the plot of the said tract could be obtained; but in the mean-
*134] time, that the grant which the governor might be pleased *to give him, by his decree, should serve him as the title thereto; to which the governor responds, by declaring, that the titles corresponding to the concession, will be issued to the petitioner, as soon as he shall present the plot made by the surveyor; and in the meantime, that his decree shall be "an equivalent thereof in all its parts; of which a certificate shall be given to the petitioners, authenticated in due form, in order that the petitioner may prove said grant, and enjoy the said lands, and dispose of them as he sees fit." The authenticity of the petition and concession, is proved by such testimony as this court has always deemed sufficient for such purpose.

It appears also, by documents in the record, which are mentioned in the appellee's petition to the court for the confirmation of this concession or grant, that after the concession was made, the grantee, for a full and valuable consideration, sold and conveyed this tract of land, and the title in fee to the same was vested in Moses E. Levy, one of the appellees in this cause; and that the said Levy did afterwards, by indenture, grant, bargain and sell, by way of exchange for other lands, the one undivided moiety or half part of said land, and its appurtenances, in fee-simple, to Fernando and Joseph de la Maza Arredondo. It does not appear by the record, that a survey was made of this concession, whilst Florida continued a province of Spain; or that it has been since surveyed. Nor does it appear by any evidence in the cause, that the locality of the concession has been definitely ascertained.

We do not consider the want of a survey as interfering with the right of the party to the land granted; but it must be taken as near as may be, as described in the petition—where it was asked for, and as it was granted, and cannot be taken elsewhere. If it cannot be found there, the appellees have no claim to an equivalent. Or if, upon the survey, it shall be found to

interfere with previous grants to third parties, the concession will be lessened in quantity, according to the extent of the rights of third parties, and an equivalent for such diminution cannot be surveyed elsewhere. Such are the terms of the concession, that the land is to be surveyed "in the place where the petitioner designates, without prejudice to a third party." It gives no right to an equivalent or another location, if it cannot be found at or near the place designated. An equivalent is not secured by the concession, in terms; nor is it by the customs or usages of Spain; nor by any law or ordinance of Spain. And it is proper here to remark, that the acts of congress for ascertaining claims and titles to land in Florida, whilst they recognise patents, grants, concessions, or orders of survey, as evidence of title, when lawfully made; do not permit, in case of a deficiency in the quantity, from any cause whatever, the survey to be extended on other lands. But this concession calls for a natural object, a creek, and is designated as beginning on the creek, about seven miles west of an Indian town, called Alligatortown. A survey may then be made so as to give the appellees the benefit of the concession, according to the description in the petition, supposing that Alligator *creek exists, and that Alligatortown can be found; for, by running a line due west from the centre of the town, [*135 until it strikes the creek, then extending that line west for a base line of the survey, making the centre of the creek equidistant from its extremities, and then running down the creek, on both sides of it, towards the Suwanee, without regard to the windings of the creek, being cut by the downward lines; the concession may be described by survey, so as to answer the description of being on the two banks of the stream or creek. Or, in the event of no such creek existing within or at the distance of seven miles from Alligatortown, or at a reasonable distance over seven miles to the west of it; then, by beginning the survey seven miles west of the town, making a line due west, the base of the survey, and running from its extremities towards the Suwanee, or in any other direction; if it shall be found, by running them towards the Suwanee, the rights of third parties would be interfered with, then the survey of 38,000 acres could be made, so as to give the appellees the benefit of the concession, in accordance with those liberal and equitable principles uniformly applied by this court in the construction of claims to land in Florida, granted before the treaty with Spain transferring Florida to the United States. If, however, neither Alligator creek can be found, nor any creek to the west of Alligatortown, entering into the Suwanee, within or at seven miles distance from the town, or a reasonable distance therefrom, and if Alligatortown cannot be found; then it is the opinion of this court, that the remaining description in the petition, of the locality of the concession, is too indefinite to enable a survey to be made, and that the appellees can take nothing under the concession. We have been the more particular upon this point, that the mandate which this court shall give, to have a survey made, may not be misunderstood by the officers whose duty it will be to have the survey executed. The decree of the superior court of East Florida is affirmed.

This cause came on to be heard, on the transcript of the record from the superior court for the district of East Florida, and was argued by counsel: On consideration whereof, it is adjudged and decreed by this court, that the

decree of the said superior court, in this cause, so far as it declares the claim of the petitioners to be valid, be and the same is hereby affirmed in all respects; and that a survey be made of the lands contained in the said concession, according to the terms thereof, for the number of acres, and at the places therein designated; provided it does not interfere with the rights of third parties. And it is further ordered by the court, that a mandate be issued to the surveyor of public lands, directing him to do and cause to be done, all the acts and things enjoined on him by law, and as required by the opinion and decree of this court in this case; and that this case be remanded to the said superior court for further proceedings to be had therein, in conformity to this decree, and the opinion of this court, which must be annexed to the mandate.

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*136] *William Wallace, Plaintiff in error, *v.* Corry McConnell, Defendant in error.

Promissory notes.—Attachment.—Plea puis darrien continuance.

An action was instituted on a promissory note against the maker, by which the latter promised to pay, at the office of discount and deposit of the Bank of the United States, at Nashville, three years after date, $4080. In the declaration, which set out the note according to its terms, and alleged the promise to pay, according to the tenor of the note, there was no averment that the note was presented at the bank, or demand of payment made there; the defendant pleaded payment and satisfaction of the note, and issue was joined thereon. Afterwards, at the succeeding term, the defendant interposed a plea of *puis darrien continuance*, stating, that $4204, part of the amount of the note, had been attached by B. & W. in a state court of Alabama, under the attachment law of the state, and a judgment had been obtained against him for $4204, and costs, with a stay of proceedings until the further proceedings in the case, which remained undetermined. The plaintiff demurred to this plea, and the circuit court sustained the demurrer; and judgment was given for the plaintiff for $679, the residue of the note beyond the amount attached, and a final judgment for the whole amount of the note: *Held*, that there was no error in the judgment of the circuit court.

The acceptor of a bill of exchange stands in the same relation to the drawee, as the maker of a note does to the payee; the acceptor is the principal debtor, in the case of a bill, precisely like the maker of a note. The liability of the acceptor grows out of and is to be governed by the terms of his acceptance; and the liability of the maker of a note grows out of, and is to be governed by, the terms of his note; the place of payment can be of no more importance in the one case than in the other.

It is of the utmost importance, that all rules relating to commercial law should be stable and uniform; they are adopted for practical purposes, to regulate the course of commercial transactions. When a note or bill is made payable at a particular bank, as is generally the case, it is well known, that according to the usual course of business, the note or bill is lodged at the bank for collection; and if the maker or acceptor calls to take it up, when it falls due, it will be delivered to him, and the business is closed; but should he not find the note or bill at the bank, he can deposit his money to meet the note, when presented; and should he be afterwards prosecuted, he will be exonerated from all costs and damages, upon proving such tender and deposit. Or, should the note or bill be made payable at some place other than a bank, and no deposit could be made, or he should choose to retain his money in his own possession, an offer to pay the money, at the time and place, would protect him against interest and costs, on bringing the money into court.

In actions on promissory notes against the maker, or on bills of exchange, where the suit is against the maker, in the one case, and the acceptor in the other, and the note or bill is made payable at a specified time and place; it is not necessary to aver in the declaration, or prove on the trial, that a demand of payment was made, in order to maintain the action; but if the