the Bulk Sales Law did not apply to a transaction not involving merchandise, but concerned fixtures, utensils, and a horse and wagon used by the vendor in his butcher shop. Although the decisions of other courts mean little since the Illinois statute is worded more broadly than those of other states, Montgomery, Bulk Sales (2d ed. 1926), 26–27, the last two decisions accord with the weight of authority. *McPartlin v. Clarkson*, 240 Mich. 390, 215 N.W. 338, 54 A.L.R. 1535 (1927); *Swift & Co. v. Tempelos*, 178 N.C. 487, 101 S.E. 8, 7 A.L.R. 1581 (1919). But it has been definitely settled that the Illinois Bulk Sales Law has broader application than that given the statute in other states. *Weskalnies v. Hesterman*, 288 Ill. 199, 123 N.E. 314, 4 A.L.R. 128 (1919) (sale by dairy farmer of his livestock, agricultural, and other implements); *La Salle Opera House Co. v. La Salle Amusement Co.*, 289 Ill. 194, 124 N.E. 454 (1919) (sale by opera house company of lease, furniture, fixtures, etc., together with good will, trade mark, and trade names).

In the *La Salle* case the court did not discuss the question whether or not intangible property was covered by the statute. But the Illinois act has been applied where a debtor assigned accounts, bills receivable, and other evidences of indebtedness for the benefit of creditors. *Danville Auburn Auto Co. v. National Trust & Credit Co.*, 212 Ill. App. 116 (1918). See Hershberger, Illinois Bulk Sales Law and Assignments for Benefit of Creditors, 21 Ill. L. Rev. 153 (1926). The transfer of the assets of one doing business as a partner has also been held to be within the act. *National Trust & Credit Co. v. Kimingham*, 201 Ill. App. 78 (1915); *Marlow v. Ringer*, 79 W.Va. 568, 91 S.E. 386, L.R.A. 1917D 623 (1917); contra *Schoeppel v. Pfannensteil*, 122 Kan. 630, 253 Pac. 567, 51 A.L.R. 398 (1927). However, in a well reasoned opinion the transfer of assets to a successor bank has been held outside the scope of the Illinois Bulk Sales Law: first, because under the rule of *ejusdem generis* the words "other goods and chattels of the vendor's business" refer to tangible personal property; second, because the opinion in *Off & Co. v. Morehead, supra*, in holding the act of 1905 discriminatory, referred only to other kinds of tangible personalty; and third, because other jurisdictions do not apply the act to transfers of intangible personalty. *People ex rel. Nelson v. Sherrard State Bank*, 258 Ill. App. 168 (1930). Decisions of other courts exempt intangible personalty, except in the transfer of a partner's interest. *Starr Piano Co. v. Sammak*, 235 N.Y. 566, 139 N.E. 737 (1923); *Rio Tire Co. v. Spectralite*, 48 S.W. (2d) 367 (Tex. Civ. App. 1932). It would seem that the principal case is rightly decided on this point.

HUBERT C. MERRICK

Conflict of Laws—Law Governing Performance of a Covenant to Pay Rent—[Federal].—L, in Chicago, signed and mailed to T, a Maryland corporation, a lease to a store located in Chicago. T signed the lease in Maryland. In a subsequent bankruptcy proceeding in Maryland it was *held* that the question of apportionability of rent is to be determined by the law of Maryland, the *lex loci contractus*. *In re Newark Shoe Stores*, 2 F. Supp. 384 (D.C.D.Md. 1933).

The court relied upon a recent Circuit Court of Appeals case, *In re Barnett*, 12 F. (2d) 73, (C.C.A. 2d 1926) in which the court said that the obligation to pay rent is an independent covenant and the law of the place of contract will govern what is sufficient performance.

In the Barnett case the court recognized that a lease is in some respects a convey-

ance of an interest in land and in other respects a contract. It also recognized that the conveyancing provisions will be governed by the *lex situs*, but insisted that the contractual provisions should be governed by the *lex loci contractus*. The difficulty in the use of this approach is in determining when a covenant is contractual and when it is a conveyancing covenant. But this difficulty, fortunately, need not detain us, for having recognized the bifurcation intended by the court, we need only ask into which class a covenant to pay rent falls.

A lease as a conveyance of an estate in land results in two estates: the lessee's possessory estate and the lessor's reversion. The rent reserved is an incident to the reversion and is definitely considered an interest in the land; it "issues out of the land." In the familiar but almost meaningless language of *Spencer's Case*, 5 Co. 16a (1583), it "touches or concerns the thing demised" and is not "merely collateral to the land." Or, as another English court put it, a rent-charge is "as much real estate as if, instead of a rent-charge issuing out of the land, land itself to the value of the annual rent-charge had been given." *Chatfield v. Berchtoldt*, L. R. 7 Ch. 192 (1872). Bigelow, The Content of Covenant of Leases, 12 Mich. L. Rev. 639, 657, 658 (1914), puts a covenant to pay rent into a group of covenants "that merely repeat in terms of a contract an already existing obligation running from the covenantor to the convenantee." In determining the liability under a covenant "to pay the rent reserved," it will be necessary to solve the property question, "What rent is due?" The *lex situs* will determine whether all or only a proportion of the monthly rent will issue out of the land; the liability under the covenant is to pay that amount.

The court cites, and is to a degree misled by, cases like *Polson v. Stewart*, 167 Mass. 211, 45 N.E. 737 (1897) and *Atwood v. Walker*, 179 Mass. 514, 61 N.E. 58 (1901). These cases are not in point as they deal with contracts to convey and not conveyances. The true analogy to these cases would be a contract to lease and it is admitted that the validity of this, as any other contract, would be settled by the *lex loci contractus*. In the principal case, and in the Barnett case which is relied upon, the documents in litigation were leases, not contracts for leases.

And, finally, the assumed rule, of conflict of laws dividing the leases into property and contract provisions, may be attacked by the argument of convenience: it is better to have a more uniform construction of an instrument conveying an interest in land, and as the law of the situs is necessarily applicable to part, it should apply to the whole of the instrument.

BEN GRODSKY

Constitutional Law—Revocation of Extradition Warrant—Mandatory Injunction—[Federal].—One De Grazier of Illinois was held in custody by the defendant sheriff awaiting extradition to Illinois where De Grazier was wanted for the commission of an extraditable offense. When plaintiff messenger from Illinois appeared to receive De Grazier, defendant refused to turn him over on the ground that the original extradition warrant had been revoked by the Governor of Texas. The Governor assigned as reason for the revocation "that the prosecution of the defendant in the case was for the sole purpose of collecting a civil debt." *Held*, mandatory injunction would not lie to compel surrender of prisoner to plaintiff. *Downey v. Schmidt*, 4 F. Supp. 1 (N.D. Texas, 1933).

As between component parts of a domestic system the term *rendition* seems more apt