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

than *extradition* which connotes dealings between independent nations. 2 Moore, Extradition (1891), 1 ff. The duty of rendition is absolute, and the governor of the asylum state has no discretion in the matter once the act of Congress, 18 U.S.C. § 662 (1926), has been complied with. *Ky. v. Dennison*, 65 U.S. 66 (1860); *Johnston v. Riley*, 13 Ga. 97 (1853); *In re opinion of Justices to Governor and Council*, 201 Mass. 609, 89 N.E. 174 (1909); *Ex parte Graves*, 236 Mass. 493, 128 N.E. 867 (1920); *In re Panmore*, 96 N.J. Eq. 397, 125 Atl. 926 (1924); *People v. Moore*, 217 N.Y. 632, 112 N.E. 1070 (1916); *People v. Pinkerton*, 17 Hun. 199 (N.Y. 1879); *Ex parte Van Vleck*, 6 Ohio Dec. 636 (1878). Upon the "theory of discretion" however, it is asserted by some authority, judicial and legislative, that the duty to render is not absolute. *State v. Eberstein*, 105 Neb. 833, 182 N.W. 500 (1921); see Mass. Pub. Statutes 1882, c. 177 and Mass. Gen. Laws 1932, c. 226, §§ 12, 13, authorizing the attorney general to advise or give opinion as to the "legality or expediency" of complying with the demand for the fugitive; case of *Kimpton* (1878) discussed in Moore, *op. cit.*, 613. Since, by the weight of authority, the duty of rendition is absolute and ministerial in nature, it must follow that once the extradition warrant has been issued it cannot be revoked except in the case of a defective requisition. *Hosmer v. Loveland*, 19 Barb. 111 (N.Y. 1854). The court in the instant case leans toward the minority view for it rests its decision in part upon *State v. Toole*, 69 Minn. 104, 72 N.W. 53, 38 L.R.A. 224 (1897) which in turn relied upon *Work v. Corrington*, 34 Ohio St. 64, 32 Am. Rep. 345 (1877). It was stated in the latter case that the power of revocation was not limited to cases where the requisition was insufficient on its face. See also *State v. Eberstein, supra;* Moore, *op. cit., supra*, § 620. It would seem that the power to revoke a warrant cannot exist when there does not also exist the power to exercise discretion in its issuance. *Hosmer v. Loveland, supra.*

Though the governor of the asylum state is under a positive "duty" to deliver up a fugitive, it is certain the federal judiciary will not order him to perform it. *Ky. v. Dennison, supra.* As was expressed in *Ex parte Virginia*, 100 U.S. 339 (1879) concerning the rendition section of the Constitution, Art. 4, § 2, it "is only declaratory of the moral duty of the state" with no power of enforcement by the central government. An anomaly and a legal *impasse* result: a "duty" that cannot be enforced and a "right" without a remedy.

NEWELL A. CLAPP

Insurance—Duty Arising from Life Insurance Application—[Federal].—Plaintiffs, as executors of applicant for life insurance, petitioned to recover damages from the defendant in tort on the ground of failure to act on the application within a reasonable time. The deceased had made an advance payment of the required premium and had satisfactorily passed a medical examination. The plaintiffs asserted that the defendant had neither accepted nor rejected the application dated February 1, 1932 prior to the applicant's death on April 7, 1932. Upon notice of the death the defendant stated that the application had been declined March 1, 1932. Defendant demurred. *Held*, demurrer sustained. *Munger et al. v. Equitable Life Assur. Soc. of the United States*, 2 F. Supp. 914 (D.C. W. D. Mo., 1933).

Contrary to the orthodox basis of liability in reference to insurance contracts, the theory asserted in the petitition was that an unreasonable delay in declining the appli-