

228 U. S.

Opinion of the Court.

resort was had to personal carriage as a means of moving the prohibited articles from this to a foreign country would not render inapplicable the prohibition against any shipment.

Judgment reversed.

UNITED STATES *v.* MESA.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TEXAS.

No. 864. Argued April 11, 1913.—Decided May 5, 1913.

Decided on authority of preceding case.
199 Fed. Rep. 518, reversed.

THE facts are stated in the opinion.

Mr. Assistant Attorney General Adkins, with whom *Mr. Karl W. Kirchwey* was on the brief, for the United States.

No appearance for defendant in error.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The defendant in error was indicted upon the charge that within the jurisdiction of the court he "did unlawfully, knowingly, wilfully and with intent to export the munitions of war hereinafter described from the said city of El Paso to Ciudad Juarez, in Mexico, make a certain shipment of certain munitions of war, to-wit: three thousand (3,000) Winchester rifle cartridges of the calibre 44; that is to say, did make a shipment of said munitions of war from said city of El Paso and with said Ciudad Juarez, in Mexico, as the destination of said shipment, by transporting the same in a wagon from a point," etc.

A demurrer to the indictment was heard along with the demurrer to the indictment in the case against Chavez, which we have just decided. The demurrer was sustained and the indictment quashed upon the opinion rendered in the *Chavez Case*. The ruling which we have just made in that case is therefore applicable to this and necessitates a reversal.

Judgment reversed.

CLARKE, TRUSTEE UNDER THE WILL OF PAR-
SONS, v. ROGERS, TRUSTEE IN BANKRUPTCY
OF THE ESTATE OF SHAW.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
FIRST CIRCUIT.

No. 221. Argued April 16, 17, 1913.—Decided May 5, 1913.

The same person, considered in different capacities, may act as the giver and receiver of a fraudulent preference; and so held in a case where a trustee of several trusts, with knowledge of his insolvency, transferred property to one of the trusts to which he was indebted. See *Bush v. Moore*, 133 Massachusetts, 192.

The obligation resting on a defaulting testamentary trustee to restore the value of the assets embezzled is of a contractual character and the debt is provable although it is fraudulent and excepted from the discharge.

Under the laws of Massachusetts there may be a contractual obligation of one trust to another for payments improperly made from assets of the latter for the benefit of the former. *Bremer v. Williams*, 210 Massachusetts, 256.

Section 17 of the Bankruptcy Act enumerates debts provable under § 63a which are not discharged, and among them are included those that arise by the conversion of trust funds.

Equality between creditors is necessarily the ultimate aim of the Bank-