that the proceeds are to be paid in unassignable installments is sufficient to create a spendthrift trust. Two trial court decisions have held that such provisions will make the insurance company a trustee and the beneficiary a *cestui;* but the appellate courts avoided the trust question by disposing of the cases on other issues. *New York Life Ins. Co. v. O'Brien,* 27 F. (2d) 773 (D.C. Mich. 1927); *Cronbach v. Aetna Life Ins. Co.,* 153 Tenn. 362, 284 S.W. 72 (1925). Designating the relationship created by a deferred payment policy a trust ignores several fundamental rules in the law of trusts. It is elementary that there must be a segregation of specific property, a *res,* devoted to the purpose of the trust. *Fulton v. Gardiner,* 127 Ohio St. 77, 186 N.E. 724 (1933); *Marble v. Marble's Estate,* 304 Ill. 229, 240, 136 N.E. 589, 594 (1922). And insurance companies do not set aside specific assets to meet the installments of the deferred payment policies. 36 Yale L. J. 394 (1927). Secondly, it is a basic rule that a person cannot be trustee of an obligation against himself and it is usually held that a deferred payment policy creates only a debtor-creditor relationship. See *Samuels v. Drew & Co.,* 296 Fed. 882 (C.C.A. 2d 1924); *Crossman Co. v. Rauch,* 263 N.Y. 264, 188 N.E. 748 (1934); Vance, Insurance 609 (1930). Further, it is usually essential to a spendthrift trust that only the income be paid to the beneficiary, whereas in the insurance cases, the chief purpose is to pay out the principal. Davis, Spendthrift Trusts in Life Insurance Policies, 5 B. U. L. Rev. 91 (1925). Finally, the claim of a *cestui* against a defaulting trustee is exclusively in equity while in the principal case, if the insurance company were to refuse to pay over an installment when it became due, the beneficiary could recover the sum at law. 1 Williston, Contracts § 369 (1920). While these objections are deeply imbedded in the law of trusts, it must be admitted that courts seeking to use the trust as a remedial device in particular situations have ignored the absence of one or more of the orthodox requisites. Where a debtor has been instructed by his creditor to hold the debt in trust for a third party, courts have charged him as a trustee for the third party. *Tillow v. Sandquist,* 234 Fed. 613 (C.C.A. 9th 1916); *Woodhouse v. Crandall,* 197 Ill. 104, 64 N.E. 292 (1902). In England it has been held that mutual promises by two partners to pay a stipulated sum annually for the remainder of the partnership term to the widow of either partner, should he die during the term, operated to create a trust in favor of the widow. *Murry v. Flavell,* 25 Ch. D. 89 (1883). And in Illinois the payment of part of the principal to the beneficiaries with each installment would not alone defeat the trust. *Wagner v. Wagner,* 244 Ill. 101, 91 N.E. 66 (1910). These exceptions were permitted because of the exigencies of the situations at bar, and do not purport to relax the strict trust requirements generally. Where, as in the instant case, all the exceptions must be called into play to create the trust relation, it is apparent that new meaning and content are being given to an old term. While a legislature can, of course, provide that the consequences of a trust relation shall follow the creation of certain kinds of debts, courts should be slow to permit such consequences without a statute. Particularly in the instant case where an alternative ground for the decision existed, the declaration of the court seems gratuitous.

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**Trusts—Effect of Contract on Rights of Contribution and Indemnity between Persons Held Jointly and Severally Liable for Breach of Trust—[New York].**—The defendant guardian asked the plaintiff, a stockbroker, to aid her in speculating in common stocks for the purpose of increasing her wards' estate. Fearing liability to the wards if loss resulted, the broker required of the guardian a promise of indemnity against claims that might be made against him because of investment in securities outside the statutory list. The promise did not by its terms indicate that the parties contemplated a breach of trust for reasonably prudent investments, although outside the statutory list, were not improper. Pursuant to their intention to increase the estate, however, the parties speculated in common stocks of new business enterprises. Loss resulted, and the two were held jointly and severally liable to the wards. The broker then sought to enforce the contract of indemnity. Reversing the unanimous decision of the Appellate Division, the Court of Appeals (with one dissent) *held*, that the broker was entitled to indemnity; the contract was not void as against public policy. *Delafield v. Barret*, 200 N.E. 67 (N.Y. 1936).

Contracts for indemnity or contribution, entered into prior to or in contemplation of breach of trust or participation therein, apparently have not been dealt with by the higher courts in this country. English courts have accorded such contracts slight consideration, preferring to apportion the ultimate liability just as they do in the absence of a contract. See *Lingard v. Bromley*, 1 V. & B. 114 (1812); *Belemore v. Watson*, 1 T. L. R. 241 (1885); *Jackson v. Dickinson*, [1903] 1 Ch. 947; see also *Bacon v. Camphausen*, 58 L. T. R. (N.S.) 851 (1888). This apportionment has traditionally been made by both American and English courts on equitable grounds. See *Lingard v. Bromley*, 1 V. & B. 114 (1812); *Stockton v. Anderson*, 40 N.J. Eq. 486, 4 Atl. 642 (1885); 16 Minn. L. Rev. 73, 74 (1931). Where persons have been held jointly and severally liable for breach of trust or participation therein, the general rule is that each has a right of contribution from the other. *Perry v. Knott*, 4 Beav. 179 (1841); *Costello v. O'Rorke*, Ir. R. 3 Eq. 172 (1869); see *Sherman v. Parish*, 53 N.Y. 483, 489 (1873); Rest., Trusts § 258 (1935). The courts are very reluctant to decree indemnity. See *Belemore v. Watson*, 1 T. L. R. 241, 242 (1885); *Bahin v. Hughes*, 31 Ch. D. 390, 395, 396, 398 (1886); *Elvidge v. Bellingham*, 37 Sol. J. 600 (1893); *Marsh v. Harrington*, 18 Vt. 150, 159 (1846); Contribution between Co-Trustees, 108 L. T. 192 (1899). But it will be allowed in two classes of cases. In the first class, where one fiduciary has been substantially at fault, he has no right to contribution and is under a duty to indemnify the other. See *Newton v. Newton*, 53 N.H. 537, 538 (1873); Rest., Trusts § 258 (1a), comment *d* (1935). Substantial fault may be found where one fiduciary has fraudulently induced participation by the other. See *Belemore v. Watson*, 1 T. L. R. 241, 242 (1885); *Bahin v. Hughes*, 31 Ch. D. 390, 398 (1886); *Elvidge v. Bellingham*, 37 Sol. J. 600 (1893). It may also be found where one fiduciary by virtue of his greater knowledge has controlled the conduct of the other, as in several English cases where one of the trustees was also the solicitor for the trust. *Re Partington*, 57 L. T. R. (N.S.) 654 (1887); *In re Linsley*, [1904] 2 Ch. 785; but see *Head v. Gould*, [1898] 2 Ch. 250. But where one fiduciary has been negligent or inactive, that fact alone does not render the active fiduciary substantially at fault. *Lingard v. Bromley*, 1 V. & B. 114 (1812); *Bahin v. Hughes*, 31 Ch. D. 390 (1886); *Elvidge v. Bellingham*, 37 Sol. J. 600 (1893); *Robinson v. Harkin*, [1896] 2 Ch. 415; but see *The Charitable Corporation v. Sutton*, 2 Atk. 400 (1742) (defrauding trustees primarily, negligent trustees secondarily liable); *Power v. O'Connor*, 19 W. R. 923, 925–7 (1871). In the second class of cases, one fiduciary is entitled to indemnity to the extent that the other has benefited from the breach, without regard to comparative fault. *Lincoln v. Wright*, 4 Beav. 427 (1841); *Power v. Hoey*, 19 W. R. 916 (1871); *Waters v. Waters*, 110 Conn. 342, 148 Atl. 326 (1930); *Patteson v. Horsley*, 29 Gratt. (Va.) 263 (1877); Rest., Trusts § 258 (1b) (1935); *cf. Chillingworth v. Chambers*, [1896] 1 Ch. 685; *McCartin v. Traphagen*, 43 N.J. Eq. 323, 11 Atl. 156 (1887) (primary liability). These considerations of benefit and comparative fault are irrelevant, however, when both parties have acted in bad faith. Berger, Contribution between Tortfeasors, 9 Ind. L. J. 229 (1934); Harper, Torts § 303 (1933); Rest., Trusts § 258 (2), comment *g* (1935). In such cases neither contribution nor indemnity will be allowed. *Att'y-Gen'l v. Wilson*, Craig & P. 1, 28 (1840); *Girod v. Pargoud*, 11 La. Ann. 329 (1856); *Cunningham v. Pell*, 5 Paige (N.Y.) 607 (1836). There is no precise definition of bad faith, but the courts seem to require an intention to misappropriate or diminish the trust fund. Compare *Girod v. Pargoud*, 11 La. Ann. 329 (1856) with *Patteson v. Horsley*, 29 Gratt. (Va.) 263 (1877); see 3 Pomeroy, Equity Jurisprudence § 1081 (4th ed. 1918); 16 Minn. L. Rev. 73 (1931).

If the Court of Appeals had disregarded the contract in the instant case, it would have found the broker entitled either to contribution or to indemnity, since there was no bad faith involved. See *Steele v. Leopold*, 135 App. Div. 247, 258, 120 N.Y.S. 569, 577 (1909). The court seemed to regard the guardian as more culpable, perhaps because she was the "prime mover" of the improper transactions and because the broker was not in a fiduciary relation with the wards. But it is difficult to see how the guardian could be considered substantially at fault; nor did she receive such benefit from the breach as would entitle the broker to indemnity on that account. *Cf. Patteson v. Horsley*, 29 Gratt. (Va.) 263 (1877); see *Re Partington*, 57 L. T. R. (N.S.) 654 (1887); *Chillingworth v. Chambers*, [1896] 1 Ch. 685. On the whole, each party was so remiss in his duty to the beneficiary as to make it equitable that the ultimate liability be shared equally; it was a case calling for contribution rather than indemnity. It is probable, therefore, that the broker would not have been granted indemnity if the court had applied equitable principles instead of considering the contract controlling. But whether the application of equitable principles would have led the court to grant contribution or indemnity, a decision based on those principles would have been preferable to the court's recognition of a contract for indemnity in a case where the impropriety of the contemplated investments was so clear. See *Delafield v. Barret*, 245 App. Div. 33, 279 N. Y. S. 445 (1935).

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**Unemployment Insurance—Due Process—First Test of Constitutionality of New York Compulsory Law—[New York].**—The New York Compulsory Unemployment Insurance Act (N.Y.L. 1935, c. 468) specifically excludes farm laborers, members of the employer's immediate family, workers for non-profit organizations and government workers. N.Y.L. 1935, c. 502. Otherwise, the law applies to all industries in which four or more persons are employed. Every employer is subject to a payroll tax, the proceeds of which are deposited with the United States Treasury in the unemployment insurance fund established by the federal Social Security Act. 49 Stat. part I, p. 620 (1935), 42 U. S. C. A. §§ 301–1305 (1935). The payroll tax is the only source of contributions to the fund. N.Y.L. 1935, § 529. Penalties are provided for employers who seek to pay their contributions by deductions from their employees' wages. § 528. Provision has been made for future classification of employers and for graduation of the payroll tax according to their individual unemployment records. § 518. Section 504 of the act makes qualified provisions for benefits to employees who have been law-