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).

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-

fully discharged for misconduct, who have voluntarily withdrawn from their employment or who have lost their employment because of strikes or lockouts. The plaintiffs, employers subject to the act, attacked the law as a violation of the due process clauses of the federal and state constitutions, and contended that the prohibition against deductions constitutes an undue limitation of the freedom of contract and that the tax scheme is arbitrary. One division of the supreme court held the entire act unconstitutional; another division held the statute constitutional except as to the provisions of § 504. *Held*, the entire act is constitutional; it is neither arbitrary, discriminatory nor unreasonable. It is a proper exercise of either the tax or police powers. *Chamberlain v. Andrews*, New York Times, April 16, 1936, p. 16 (N.Y. Ct. Appeals, April 15, 1936).

This case affords refreshing relief from the recent tendency of both federal and state courts to invalidate social legislation. *Railroad Retirement Board v. Alton Ry.*, 295 U.S. 330 (1935); *People ex rel. Tipaldo v. Morehead*, 270 N.Y. 233, 200 N.E. 799 (1936); see the Nation, April 29, 1936, p. 534. Testing the constitutionality of legislation involves a determination of whether the ends sought to be achieved by the legislation are permissible and whether the means chosen have a fair relation to the ends. See Brown, Due Process of Law, Police Power, and the Supreme Court, 40 Harv. L. Rev. 943 (1927). That the object of unemployment insurance, the alleviation of the distress of unemployment, is permissible within the traditional scope of the police power seems scarcely debatable. Unemployment, both as a permanent and an emergency problem, has created serious social and personal maladjustments. If unemployment cannot be substantially prevented, the state must see that adequate provisions are made for the unemployed. See Lambert, Compulsory Unemployment Insurance and Due Process of Law, 7 Wis. L. Rev. 146 (1932); Elliot and Merrill, Social Disorganization, c. XIV (1934). The conclusion of the New York court that the means chosen by the legislature to solve this critical problem are not arbitrary seems clearly correct. True, the employer and employee are deprived of some freedom of contract and the employer is subjected to a new duty to contribute to the support of employees whose employment has ended. But such limitations of employers' rights are not unknown. See *ante* p. 657. Under the workmen's compensation acts, for instance, contributions are exacted from employers to compensate employees for injuries received under circumstances which at common law would not have made the employer liable. *Mountain Timber Co. v. Washington*, 243 U.S. 219 (1917). The employer in both cases is compelled to pay into the common fund, not because he is personally at fault, but because there is a growing belief that industry should assume a fair share of the burden confronting industrial employees. The provisions in the New York law placing on employers the cost of unemployment find their parallel in other situations in which the property of one class is taken and put into a common fund for the use of another class. See *Noble State Bank v. Haskell*, 219 U.S. 104 (1911) (upholding an assessment on banks for a depositors' guaranty fund); *Dayton-Goose Creek Ry. Co. v. U.S.*, 263 U.S. 456 (1924) (upholding the provisions of an act which required carriers to contribute to a fund to be used for loans to carriers); *State v. Cassiry*, 22 Minn. 312 (1875) (approving a tax on saloonkeepers to be used in maintaining an asylum for inebriated persons). Whether the unemployment insurance acts represent the use of the taxing power or the police power—and the court in the instant case refused to decide this issue—would appear to be immaterial, for both "powers" are subject to the limitations of the due process

clause and the exercise of either is subject to the test of reasonableness. Maggs, The Constitution and the Recovery Legislation: The Rôles of Document, Doctrine and Judges, 1 Univ. Chi. L. Rev. 665 (1934); but see 3 Law and Contemporary Problems 138 (1936).

Wills—Subsequent Conveyance as Revocation or Ademption where Testator Reacquires Property—[Illinois].—A testator devised generally all his real and personal property to the defendant. Two years later, the testator conveyed the land here in question to the defendant who subsequently reconveyed it to the testator. The testator died owning this land without republishing his will. In a suit for partition, his heirs contended that the conveyance revoked the will as to this land, even though it was subsequently reacquired, and that it passed to them by descent. From a decree dismissing the complaint, the heirs appealed. *Held*, affirmed. The conveyance did not impliedly revoke the general devise where the testator later reacquired the property. *Strang v. Day*, 199 N.E. 263 (Ill. 1935).

It was a familiar common law rule that after-acquired realty could not be devised. *Earl of Lincoln's Case*, Freeman's Ch. R. 202 (1695); see *Willis v. Watson*, 5 Ill. 64 (1842). Thus, a conveyance of land already devised operated as a revocation of the devise even though the testator reacquired the land. *Marwood v. Turner*, 3 P. Wm. 163 (1732); *Walton v. Walton*, 7 Johns. Ch. (N.Y.) 258 (1823). As to personal property, however, the common law was just the contrary; a sale of bequeathed personalty did not work a revocation and if it was reacquired by the testator, it passed by the will. *Cogdell v. Cogdell*, 3 S.C. Eq. 346 (1811). The basis for the real property rule was removed by the Wills Act in England, and by similar legislation in the United States permitting devises of after-acquired realty by making the will operate as of the testator's death, rather than as of the time of execution. 1 Vict., c. 26, § 111 (1837); Ill. L. 1833, p. 315, Smith-Hurd's Ill. Rev. Stat. 1935, c. 148, § 1; Bordwell, Statute Laws of Wills, 14 Iowa L. Rev. 187 (1929). Accordingly, in most jurisdictions today a conveyance of realty as well as of personalty does not revoke the devise and the property, if reacquired, will pass under the will. *Woolery v. Woolery*, 48 Ind. 523 (1874); *Morey v. Sohier*, 63 N.H. 507, 3Atl. 363 (1886); *Gregg v. McMillan*, 54 S.C. 378, 32 S.E. 447 (1889). Despite such legislation, however, Illinois has adopted the anomalous position of permitting reacquired personal property to pass under the will (*In re Austin*, 243 Ill. App. 386 (1927)), but of retaining the common law rule as to specific devises of realty. *Phillippe v. Clevenger*, 239 Ill. 117, 87 N.E. 858 (1909). It would seem that the court in the latter case applied the technical common law rule of revocation to a situation for which it had been rendered inapplicable by statute. 1 Page, Wills § 467 (2d ed. 1926); Costigan, Cases on Wills 363, note 42 (2d ed. 1929). Had the conveyed property never been reacquired, it of course would not have passed by the will, not because the conveyance had worked a revocation, but because the testator did not own the property at his death. The failure of a devise or bequest because of the lack of such ownership is, strictly speaking, known as ademption, not revocation. 1 Page, Wills § 456 (2d ed. 1926). There is confusion in the use of these terms, largely because under either theory the result is the same if the property is not reacquired. 26 Mich. L. Rev. 124 (1927). But nicety in expression is essential to avoid technical difficulties. Where the property is reacquired, the theory of revocation requires a republishing of the will to pass the property by the device; under ademption, however, the property passes by