See Cardozo, J., in *Hopkins Federal Sav. & L. Ass'n v. Cleary*, 296 U.S. 315 (1935); *Prudential Bldg. & L. Ass'n v. Shaw*, 119 Tex. 228, 26 S.W. (2d) 168 (1930). With respect to individual interests, a building and loan association is mutual and cooperative, all members being equally entitled to share in the assets in proportion to their contributions. *Fornataro v. Atlantic Coast Bldg. & L. Ass'n.*, 10 N.J. Misc. 1248, 163 Atl. 240 (1932). It has been held to be a good defense to an action by a withdrawing shareholder to show that full payment to the plaintiff would deprive the remaining members of part of their proportionate share in the existing assets. *Richman v. Hercules Bldg. & L. Ass'n*, unreported, cited in *Fornataro v. Atlantic Coast Bldg. & L. Ass'n*, 10 N.J. Misc. 1248, 1254, 163 Atl. 240, 242 (1932). This result follows from the special definition of insolvency which has been applied to building and loan associations. Such associations are deemed insolvent when they are unable to pay their stockholders the amount of their contributions dollar for dollar. *Mott v. Western Sav. & L. Ass'n.*, 142 Ore. 344, 20 P. (2d) 236 (1933); *Towle v. Am. B., L. & Inv. Soc.*, 61 Fed. 446 (D.C. Ill. 1894). When insolvency supervenes, mutuality compels mutual participation in the reduced assets, even though some members have given notice of withdrawal which has matured; consequently the right of withdrawal is suspended in the absence of some express provision to the contrary. *Aldrich v. Gray*, 147 Fed. 453 (C.C.A. 6th 1906); 49 L.R.A. (n.s.) 1142 n. (1914); Endlich, Building Associations § 511 (2d ed. 1895); Thompson, Building Associations § 289 (2d ed. 1899). The effect of the holding in the present case is that one stockholder of an insolvent building and loan association has a "vested" right to reduce the proportionate share of all the other stockholders in the existing assets, even though by the same reasoning every other member must have the same "vested" right to be paid in full in the event of his death. Substantially, the 1933 statute suspended the right of the plaintiff to sue for the full amount paid in as long as the association remained insolvent. This is no more than the courts of some jurisdictions have already accomplished without statutes. See *Brown v. Victor Bldg. Ass'n*, 302 Pa. 254, 153 Atl. 349 (1931).

Conflict of Laws—Applicable Law in Determining whether Instrument is Sealed within the Meaning of Statute of Limitations—[Georgia].—Suit was brought in Georgia on a written promise to pay money which was executed and payable in Florida. Under Florida law the instrument embodying this promise, although it did not recite that it was sealed, would be considered as sealed. A Georgia statute provided that for purposes of determining the period of limitations, an instrument was not under seal unless the body of the instrument contained a recitation of this fact. The period of limitations for simple contracts established by the Georgia Code had elapsed, but the limitation for actions on sealed instruments containing a recitation that such instruments were sealed had not elapsed. *Held*, dismissal of suit affirmed. Instruments were not sealed within meaning of the Georgia statute of limitations. *Alropa Corp. v. Rossee*, 86 F. (2d) 118 (C.C.A. 5th 1936).

In applying the conflict of laws principle that the validity of a contract may be governed by foreign law while the procedure to be followed is always that of the law of the forum, American courts are unanimous in holding that the period of limitations on contracts is an incident of procedure. 3 Beale, Conflict of Laws §§ 584.1, 603.1 (1935). But it has been suggested that limitation of action, analytically, is a substan-

tive matter. Stumberg, Conflict of Laws 141 (1937). When a forum has a special period of limitations for instruments under seal, the preliminary question of whether an instrument is under seal has also been determined by reference to the local law of of the forum. *Bank of the United States v. Donnally*, 8 Pet. (U.S.) 361 (1834); *Watson v. Brewster*, 1 Barr. (Pa.) 381 (1845); *Kirsch v. Lubin*, 131 Misc. 700, 228 N.Y.S. 94 (1927). Similarly, when the question of whether an instrument is under seal is preliminary to the question of what is the appropriate form of action, both questions have been determined by reference to the law of the forum. *Warren v. Lynch*, 5 Johns. (N.Y.) 239 (1810); *Le Roy v. Beard*, 8 How. (U.S.) 451 (1850). But when the question is whether the instrument is sealed so as to "import consideration," the law governing the validity of the contract is applied. *Woodbury v. United States Casualty Co.*, 284 Ill. 227, 120 N.E. 8 (1918). Thus, when the question of whether an instrument is sealed is preliminary to a question of procedure, the law of the forum is applied; when the question is preliminary to a question of substance, *i.e.*, whether an obligation exists, the law governing the validity of the contract is applied. A rather curious result is then possible in a state with strict common law forms of action if the above decisions are followed. It is possible to hold that a gratuitous promise is binding because, under the law governing its validity, it is regarded as under seal, and yet that the promise is unenforceable by an action of covenant because it is not under seal according to the law of the forum. Then, since there is no consideration, assumpsit will not lie (Shipman, Common Law Pleading §§ 115, 123 (3d ed. 1923)), and a promise admittedly binding will not be enforceable. This apparently anomalous result may be ascribed to the fact that the early common law, a system of strict pleading and rigid forms of action, would not operate unless the plaintiff satisfied the requirements of a form of action, as defined by local law. See Buckland and McNair, Roman Law and Common Law 315 (1936). Under modern codes the enforceability of the promise in the hypothetical case would not involve any difficulty in view of the provisions that pleadings are to be liberally construed with a view to doing justice between the parties. Ill. State Bar Stats. 1935, c. 110, ¶¶ 159 § 31 (1), 161 § 33 (3).

In construing a statute providing a different period of limitations for sealed instruments, the question whether the instrument was sealed might well be referred to the law governing the validity of the contract. It should be observed that such a statute is susceptible of two interpretations. It may be construed as: (1) setting up a special period for instruments containing the physical marks designated as seal by the forum; or as (2) setting up a special period for instruments of special solemnity. If the second construction were adopted, the solemnity of an instrument should be determined by reference to the law governing the validity of the contract since that is the legal environment where it was created or with which it has a substantial connection. The first construction has the advantage of expediency since the question can be answered without referring to foreign law. However, it emphasizes physical marks rather than their symbolic significance. The second construction is supported by the argument that historically the seal was a badge of solemnity. Moreover, when two Anglo-American jurisdictions are concerned, a court would not be seriously burdened if it referred to foreign law in order to determine whether an instrument was under seal. In the instant case resort to the second construction was forestalled by the provision in the Georgia statute that an instrument was not to be under seal within the meaning of the limitation statute unless it recited that fact.