COMMUNICATIONS.

After this second article in reference to the natural use of lands, which was published in the February number had gone to press, Mr. McMurtrie called the writer's attention to the recent decision of the House of Lords in Young *v.* Bankier Distillery Company, 1893 Ap. Case, 691. In this case, published since the article was written, the lessees of a colliery pumped mine water from their workings into a stream, stated to be the only natural outlet for carrying the water off, upon which the inferior land owner had for many years maintained a distillery. The action was brought (in Scotland) to have the mine owner indicted from discharging his water into the stream and for damages. A judgment in favor of the plaintiffs was affirmed by the House of Lords and Sanderson's case cited by the appellants was strongly disapproved.

Lord MacNaghten, said:

"Then the appellants urged that working coal was the natural and proper use of the mineral property. They said they could not continue to work unless they were permitted to discharge the water which accumulates in their mine, and they added that this water course is the natural and proper channel to carry off the surplus water of the district. All that may be very true, but in this country at any rate it is not permissible in such a case for a man to use his own property so as to injure the property of his neighbor."

And Lord Shand, said:

"The defenders' counsel incited your Lordships to follow the decision in an American case decided in Supreme Court of Pennsylvania— the case of Pennsylvania Coal Company *v.* Sanderson, 56 American Rep. 89, decided in Feburary 1886. In that case, undoubtedly, the court held that the owners of a mine were entitled to pump up water from the low strata of the mine and to send it into an abjoining stream, although the quantity of the water was thereby increased and its quality so affected as to render it totally unfit for domestic purposes by the lower riparian owners. The case had been twice previously

before the court and on both occasions the judgment was given against the mine owner. On the third occasion, which occurred in consequence of a third trial to assess the damages the jury found a very large sum due to the lower owner; but the verdict was quashed and the whole case reconsidered in the reference to the legal rights of the parties with the result I have stated. In a court of seven judges there were three who dissented from the judgment, including the Chief Justice of the State. This circumstance and the grounds of the judgment seem to me to be sufficient to deprive the case of any real weight. . . . I shall only add that while the enormous value of the mining interests in the district of Pennsylvania, from which the case came, and which is fully explained in the judgment, might have found a good reason for appealing to the legislature to pass a special measure to restrain any proceeding by interdict, at the instance of surface proprietors, and to confine them to a right to damages only for injury sustained, that value could not in my opinion afford no good legal ground for allowing the proprietor of a mine so to work his minerals for his own profit as to destroy or greatly injure his neighbor's estate, by subjecting it by means of artificial operations to the burden of receiving water, enlarged in quantity and destroyed in quality, without payment of compensation or damages for the injury done. The case has no application to the present because the decision was based on special circumstance as to the great relative value of the minerals as compared with the surface in the district; and because in any view the decision seems to me to have been making law rather than interpreting the law, so as to give effect to sound, just and well recognized principles as to the common interest and rights of upper and lower proprietors in the running water of a stream."

Abolish the Seal.

Is it not about time that the Legislature helped the courts to get clear of, avoid and abrogate that relic of legal barbarism, *the seal?* Since the time when it required the impression of

the sealer's thumb upon wax, until now, when the dash of a pen, intended as a seal, will do, a long and weary struggle for emancipation has been borne. What does it now import, even in conservative Pennsylvania? *Nothing*, when it stands in the way of the supposed justice and merits of a transaction. The sessions and the statutes have so belabored the ancient solemnity and sacredness of *the seal*, that about the only quality left unattacked, is preventing the bar of a statute of limitations. And even that is of doubtful advantage. If a man has a note about to be barred, the courts are open let them implead one another. So long as it is not required that it be stated in the body of the instrument that it is *sealed*, a scroll or a dash by the holder will do the business. Get your judgment, if you have an honest claim, it will defy the statute. By the old statute a Writ of Error could be taken within seven years; since 1874, within two years. By the old law, in partition, the sheriff took twelve men; since 1879, six men. By the old law the lien of decedent's debts remained for five years; now by Act of 1893, two years.

Are not these improvements? Do they not expedite business and legal affairs? Emancipate all instruments *for the payment of money* from the legal requirement of a seal. Leave it, if you please, on Wills, and on Deeds, as a relic. *Tempus fugit.* Let us get on.

J. G. F.

BLOOMSBURG, PENNA.