THE CITY POST.

WEDNESDAY MORNING.....SEPTEMBER 7.

SUPREME COURT.

On the bench—Chief Justice Black; and Justices Lewis, Lowrie, Woodward and Knox.

Yesterday morning the members of the Court read lengthy written opinions on the motion for an injunction to prevent the city of Philadelphia, from subscribing to the Hempfield, Water Gap, and other railroad companies. Three members of the Court, Chief Justice Black, and Justices Woodward and Knox, delivered opinions sustaining the legality of the subscriptions. Justices Lewis and Lowrie delivered able dissenting opinions.

There was a large number of persons present, during the delivery of the opinions. We noticed among them in the room, many of our citizens who occupy prominent positions in the various railroad companies organized in this city.

Chief Justice Black's opinion is a very lengthy, and also a very able document. We subjoin a brief recapitulation of the points and principles presented by the Chief Justice, and which settled the cause:

1. In determining whether an Act of the Legislature is constitutional or not, we must look to the body of the Constitution itself for reasons. The general principles of justice, liberty and right not contained or expressed in that instrument, are for proper elements of a judicial decision upon it.

2. If such Act be written, the general grant of legislative power, that is, if it be in its character and essence a law, and if it be not forbidden expressly or impliedly either by the State or Federal Constitution, it is valid.

3. To make it void, it must be clearly not an exercise of legislative authority, or else be forbidden so plainly as to leave the case free from all doubt.

4. An Act of Assembly authorizing a subscription of a city to the stock of a railroad corporation, is not forbidden by Art. 9, Sec. 12 of the State Constitution (this Section not being a restriction upon the legislative authority of the two Houses, but a bestowal of privilege upon the separate branches.

5. Such an act does not impair the obligations of any existing contracts, nor does it attempt the impossibility of creating a contract, but merely authorizes two corporations to make one if they shall see proper.

6. This is not such an injury to the plaintiff's lands, goods or persons, that they are entitled to a judicial remedy by it, agreeably to Sec. 11 of Art. 9. It is no injury at all, except on the partitular assumption that it is forbidden in some other part of the Constitution.

7. It does not violate the right of acquiring, possessing and protecting property secured by Sec. 1 of Art. 9, for the right of property is not so absolute, but that it may be taxed for the public benefit.

8. This not a taking of private property for public use, without compensation, contrary to Sec. 10, of Art. IX. When property is not actually taken, and not directly appropriated to public use, though it be subjected to the hazard of the sword to greater burdens than it was before, it is not *taken*.

9. It cannot be said that the plaintiffs will be *deprived* of their property, in violation of Sec. 11, Art. IX. The settled meaning of the words of that clause, as there used, is the same as that of the word *take*, in Sec. 10.

10. An act of assembly, to authorize the taking of private property for corporate purposes, would be unconstitutional, because it would not be legislation, but a mere decree between private parties. But this is no taking in any sense, for any purpose, nor for any such.

11. The plaintiffs have no ground of complaint against the acts of assembly now in question, except because they subject the taxation of a public debt, of which they may be required, hereafter, to pay a part in the shape of taxes, by taxation in common with any farm ever come to them.

12. If it be within the scope of the legislative power, with the consent of the local authorities, to permit the assessment of every land tax, for the purpose of assisting a corporation to build a railroad, bearing to the tax payers, the relation which those roads do, then the laws complained of are unobjectionable.

13. Taxation is a legislative right and duty, which must be exercised by the general assembly of laws passed by them, or under their authority.

14. The power of the assembly, with reference to taxation, is limited only by their own discretion. For the absence of it, the members are accountable to nobody but their constituents.

15. By taxation is meant a certain mode of raising revenue for a public purpose, in which the community at large pays it as an interest. The right of State to lay taxes has no greater extent than this.

16. An act of the Legislature authorizing contributions to be levied for a mere private purpose, or for a purpose which though it be public, is one in which the people from whom they are exacted have no interest, would not be a law, but a sentence commanding the periodical payment of a certain sum by one portion or a class of the people to another. The power to make such order is not legislative, but judicial; and was not given to the Assembly by the general grant of legislative authority.

17. But to make a tax law unconstitutional thus granted, it must be apparent at first blush; that the community taxed can have no possible interest in the purpose to which their money is to be applied. And this is more especially true if it be a local tax; and the local authorities have themselves levied the tax in pursuance of an act of Assembly.

18. If, therefore, the making of a railroad be a mere private affair, or if the people of Philadelphia have manifestly no interest in the railroads which run to and towards the city from Eastward from Wheeling, then these laws are unconstitutional.

19. But railroads are not private affairs. They are public improvements. And it is the right and duty of the State to advance the commerce and promote the welfare of the people, by making or causing them to be made at the public expense.

20. If the State declines to make desirable or public improvements, she may permit it to be done by a company, and the fact that it is under a private corporation, does not take away its character as a public work.

21. The right of the company, by which it is made, to be compensated for the expense of constructing it, by taking tolls of those who use it, though it gives the corporation an interest in it, does not extinguish the interest of the public, nor make the work a private one; because, to say nothing of the advantages the public can pay the toll, and still carry and travel on it very much cheaper than otherwise.

22. The State may, therefore, rightfully aid in the execution of such public works, by detracting to the corporation the right of eminent domain, as the State's does. But the exercise of the taxing power, as she has done very often.

23. The right of the Legislature, with the consent of the local authorities, to tax a particular city for a local improvement, is as clear as the right to lay a general tax for any public purpose whatsoever.

24. The State having the constitutional power to create a State debt by authorizing on behalf of the whole people to the stock of a private corporation, or to loan them her credit, she may authorize a city or district to do the same thing, provided such city or district has a special interest in the work to be so aided.

25. This is not a case in which we can determine as a matter of law, that the city has no interest in the proposed railroads. That is a matter of fact, has not even been asserted in the argument.

26. The Legislature and the Councils have decided that the city has an interest large enough to justify the subscription; we cannot pronounce this without declaring it unreasonable, because it would not be legislation, but a mere decree between private parties. But this is no taking in any sense, for any purpose, nor for any such.

27. Finally: The authorities of the city, in accordance with the charter, and with certain laws supplementary thereto, are about to create a public debt for a public purpose in which the city has an interest. It will be a valid and binding as if it had been legally contracted to accomplish any other public purpose for the benefit of the city.

Injunction refused.

Judge Lowrie next read his opinion, sustaining the injunction. It is the most lengthy of any of the opinions, and presents the views of the learned Judge with great force, and clearness. The reasons which induced Justice Lewis to form the granting of the injunction are set forth in the following summary of—

1. The provision of the constitution puts the property of the citizen under the control of a private corporation, without his consent, thus depriving him of the right of "possessing and protecting it; and therefore violates the first section of the Bill of Rights."

2. It converts the members of a municipal government into a corporation which has municipal powers for its objects, and which being bound by contract, cannot be altered, reformed, or abolished at the pleasure of the people; and it is therefore a violation of the second section.

3. It puts the property of the citizen, without his consent under a government where it can no longer be protected by free and equal votes, but where wealth controls poverty and where money has more votes than men; and therefore violates the fifth section.

4. It deprives the citizen of his property without judgment or his peers, and without a trial in the course of law, and therefore violates the sixth section.

5. It takes the property of the citizen without compensation, as it is, therefore, a usurpation of power not granted, as well as a violation of the rights plainly expressed and implied in the 10th section.

6. It deprives the citizen of the lands and goods secured to him by patents, deeds, and other contracts, and therefore violates the 17th section.

7. It hands a corporate body with a privilege of taking private property without requiring such corporation to make just compensation in advance, or to give adequate security therefor; and, therefore, violates the 4th section of the amendatal Constitution.

8. The appointment by the Legislature of the municipal officers as the agents of the present plaintiffs to charge their lands and goods with millions, fourthers, without their actual consent, gives such officers the most authority than a similar enactment would confer upon Queen Victoria or Emperor Nicholas. It is assuming the power to act without the reality of assent, and is, therefore, an injury about to be perpetrated under circumstances of peculiar aggravation. To deny a remedy by a dozen cases of law, and to refuse to administer "right and justice without delay," in such a case would be a violation of the 11th section of the declaration of rights.

My views on this subject may be unfashionable, but whatever credit shall be expended and the day of payment shall come, when the bonds (which are to be issued like other obligations of securities without any provision for payment) shall come to maturity, when the railroad excitement shall subside and interest shall become her diminished, when the exhilaration of profuse expenditure shall give place to the gloom to be produced by the grinding exactions of the tax gatherer—

When the rich shall be impoverished, and the poor shall be cast into prison—when all classes shall be involved in one common ruin, beyond the means of payment; when bankruptcy, industry and enterprise shall cease with the destruction of individual rights; when the freemen of this Commonwealth shall thus become the bondmen of corporations monwealth shall thus become the bondmen of corporations and the fact that it is under a private corporation, does not take away its character as a public work.

Justice Lowrie next delivered an opinion. He coincided with Justice Lewis, that the application for an injunction should be granted. Municipal corporations, the Judge contended, had no right, over with the consent of the Legislature, and of a majority of the citizens, to become stockholders in Railroad corporations. The corporations aided by the investment, are private companies, and not public, and the subscription of the municipal, if carried out, would by to make a municipal corporation, and therefore all its citizens, and, to some extent, all owning property therein, members of a private corporation; it would take the property of the citizen and invest it in a private company. The government cannot force any portion of the people to engage in such their interest, to the speculation of a private corporation, or partnership, if such governmental interference is excluded by the whole spirit of the bill of rights. The learned Judge added: "The incidentally of the proceedings presents itself in a strong light, it we take into consideration the rule which has been so often affirmed, that the charter of a private corporation is placed by its Constitution of the United States, entirely beyond the reach of all State power. It is stated that over sixty millions of dollars are invested in this way, in several States, under various acts of Assembly. This amount is equal to the assessed valuation of property in about half or the counties and half of the ten cities of this State, taking the more thinly populated parts. The amount may be overstated, but this is unimportant. What, then, is the proposition? It is to place all this property under the control of private chartered corporations. Not by the individual will of each property holder, acting for himself, but by the will of the government. That is, government interferes with private property, in order to place it beyond the control of both the individual and the government. It exercises power in order to withcast power, or rather to transfer it to private hands. The property whose relations were subject to the rule of the law—the institution outlawed—banished, its relations, and sent into the domain of private corporation, where it can claim only an seller's rights, and where the votes or the law and of the constitution is unheard, and the equal ballot of the independent freeman is disregarded."

Judge Lowrie next entered into an examination of the "history of the development of private rights." He concluded by expressing his opinion that the injunction should be granted.

Judge Woodward argued against the injunction. He held there was nothing in the Declaration of Rights which restrains the legislative power of taxation. That it would not be long perverted to injurious use was as certain as the law of self-preservation, for so long as the people rule themselves, it was impossible to anticipate that they would employ any of the powers of the government for their own oppression. His opinion was that upon the received principles of constitutional construction, these Acts of Assembly, granting the right to corporations to subscribe to the stock of railroad companies, were constitutional and not void, and in consequently thought that the motion for an injunction should be denied.

Judge Knox read the concluding opinion, taking the same ground as Justices Black and Woodward—denying the injunction.

Good et. al. vs. Schoener; Columbia county; judgment affirmed. Opinion by Chief Justice Black.

County of Lycoming vs. Halling; judgment reversed, and *venire fa de novo* awarded. Opinion by Chief Justice Black.

Cable vs. Bachman; Northumberland county; judgment reversed, and *venire fa de novo* awarded. Opinion by Chief Justice Black.

Bowers vs. Cummings; Lycoming county. Opinion by Chief Justice Black. Justices Lewis and Knox dissenting.

Keeler vs. Bissell; Northumberland county; judgment of the Court of Common Pleas reversed. The appeal is reinstated, and proceedings awarded. Opinion by Chief Justice Black—Justices Lewis and Knox dissenting.

McCullough vs. Wilson; Cumberland county; judgment reversed, and new trial awarded. Opinion by Mr. Justice Lowrie.

Lewis vs. Hammel; Dauphin county; judgment reversed, &c. So far as it allows costs to be taxed against Lewis, and affirmed as to the residue. Opinion by Mr. Justice Lowrie.

Justice Knox filing a dissenting opinion, and Chief Justice Black concurring in same.

Driesback vs. Fox; Union county; judgment affirmed. Opinion by Mr. Justice Lowrie.

Shriner vs. Keller; Union county; judgment reversed, and new trial awarded. Opinion by Mr. Justice Lowrie.

Palmer vs. Commonwealth; Philadelphia; judgment affirmed. Opinion by Mr. Justice Lowrie.

Henry Omit vs. the Commonwealth of Pennsylvania. Certiorari to Justice Kilde of Harrisburg.

The opinion of the Court was read by Woodward, J.

The defendant was convicted and fined by Justice Kilde, of Harrisburg, for selling liquor on Sunday to a traveller by the name of Wright, in accordance with the first section of the provision of an act of Assembly "for the prevention of vice and immortality, and of unlawful gaming and to restrain disorderly sports and dissipation," which is in the following words: "Every person shall do or perform any worldly employment or business whatsoever on the Lord's Day, commonly called Sunday, works of charity and necessity excepted, or shall use or practice any unlawful game, hunting, shooting, sport or diversion whatsoever, on the same day (which is construed to be the first day of the week) person so offending shall for every such offence, forfeit and pay four dollars, to be levied by distress, &c., &c.," with a proviso, assessed exempting the dressing of victuals in taverns, inns, bake houses, private families, the traveling of milk carts, the ferrying of water passengers, &c., &c.

The following assigned two errors:

1st. That the sale of liquor on the traveler (Wight) was not an offence against the act, because it was within the proviso.

2nd. That the act is not applicable to persons licensed to keep an inn or tavern under the act of 11th of March, 1834, and its supplements.

The Court opined that the offence was not a work of charity or necessity, because the defendant does not adduce it as was, and because the exception characterizes it as contrary to the act of Assembly.

The Court decided that the offence did fall within the act, as the proviso excepted only the dressing of victuals in taverns, &c., &c.

In regard to the second error advanced, the Court decided that as the 7th section, 3rd Article of the Constitution empowers the Legislature to grant to corporations to subscribe to the stock of railroad companies, and as the Legislature has granted such power to the city of Philadelphia, by the Act of 1854, the city is empowered