BLUE LAWS OF NEW HAVEN.

The Supreme Court of Connecticut has, within the last year, filed an opinion in regard to Sunday laws which would have startled the early Legislators of New Haven. The case is State *v.* Miller, 68 Conn. 373. Charles H. Miller (known to some students of Yale) was prosecuted for keeping open on Sunday, at Savin Rock, a billiard room, and demurred. The demurrer was reserved for the Supreme Court of Errors. The court say: "The prohibition on Sunday of any sport or recreation which interferes with the preservation of public peace and order or the enjoyment of appropriate quiet and religious observances on that day, is clearly within the power of the Legislature. If, however, the language used [in the statute] must be construed as including an exercise of the power employed prior to the adoption of the Constitution, to control private action of individuals in a matter of personal conscience, serious questions would arise."

The question thus raised would render it extremely doubtful whether the Sunday legislation of this State, as it has existed for the past seventy-five years, could be upheld in its entirety.

It may be interesting to recall the change which two hundred and fifty years have brought about, and this change will be especially noticeable if we compare the spirit of this decision with the former "Blue Laws" of New Haven.

Blue laws are generally spoken of as the laws of the New England Colonies, especially those enforcing Sabbath keeping and other religious observances. The term "Blue Laws," however, in its proper application as fixed by the use of a hundred years, is applicable only to the regulations of the Colony of New Haven, and especially to those of the Town of New Haven soon after its first settlement.

Webster's Unabridged Dictionary defines "Blue laws" as follows: "A name first used in the eighteenth century to describe certain supposititious laws of extreme rigor reported to have been enacted in New Haven; hence any puritanical laws."

Johnson's Universal Encyclopædia defines "Blue laws" to be "A name applied to certain enactments said to have been made

by the Legislature of the Colony of New Haven, now a part of Connecticut. These laws are said to have interfered seriously with the private life, religious conduct and even the dress of citizens; but, while it is true that not only in New Haven, but in other parts of New England, there was undue influence in these affairs, it is equally certain that many of the blue laws of which certain writers have told us never had any existence in any statute book."

The American Encyclopædia defines "Blue laws" as "A term sometimes applied to the early enactments of several of the New England States, and more frequently limited to the laws of New Haven Colony. * * * The existence of such a code of blue laws is fully disproved. The only authority in its favor is Peters who is notoriously untrustworthy."

The Century Dictionary says: "The assertion by some writers of the existence of the blue laws has no other basis than the adoption by the first authorities of New Haven Colony of the Scripture as their code of law and government, and their strict application of Mosaic principles."

The American Supplement to the Encyclopædia Britannica says that the term "Blue laws" became fixed in its present meaning by the publication of "A General History of Connecticut, from its first Settlement under George Fenwick to its latest period of amity with Great Britain prior to the Revolution. By a Gentleman of the Province, London, 1781." And it adds that the author was the Rev. Samuel Peters.

Peters affirms that the term "blue laws" was applied to the laws of New Haven by the people of Boston and Hartford. He says: "The law givers soon discovered that the precepts in the Old and New Testaments were insufficient to support them in their arbitrary and bloody undertakings; they, therefore, gave themselves up to their own inventions in making others, wherein, in some instances, they betrayed such an extreme degree of wanton cruelty and oppression, that even the rigid fanatics of Boston and the mad zealots of Hartford, put to the blush, christened them the Blue Laws; and the former held a day of thanksgiving because God, in his good providence, had stationed Eaton and Davenport so far from them" (Peters' History, p. 43).

New Haven seems to have exceeded all its neighbors in religious zeal. This was especially notable in its allowing no one to vote who was not a member of an orthodox church; its having the courage of its convictions in applying the strictest pre-

cepts and penalties of the Mosaic law in its legislation, especially to the keeping of the Sabbath; the thoroughness of the enforcement of the laws of the Pentateuch; its refusal of the privilege of trial by jury; its failure to recognize any other earthly power or authority, and its denial of any right of appeal.

Massachusetts Colony by statute restricted the franchise to church members, but this provision was not part of its constitution.

The government of the Town of New Haven was established under the advice and direction of Rev. John Davenport, and no higher power than itself except God was acknowledged or mentioned.

The entire independence of the town of any other government appears from the first. In settling its form of government no mention is made of King, Parliament or any other authority. The Rev. Mr. Davenport explained to them that they were "met for the extablishment of such civil order as might be most pleasing unto God, and for the choosing the fittest men for foundation work of a church to be gathered."

Upon his suggestion, the planters unanimously agreed that "The Scriptures do hold forth a perfect rule for the direction and government of all men and all duties which they are to perform to God and men, as well in the government of families and commonwealth as in the matters of the church." They further voted unanimously that "In all matters which concern civil order, as choice of magistrates and officers, making and repealing of laws," etc., they would "all be ordered by those rules which the Scripture holds forth."

Mr. Davenport further informed them that they "were free to cast themselves into that mould and form of commonwealth which appeareth best for them in reference to the securing of pure and peaceful enjoyment of Christ and his ordinances in the church according to God."

The question next arose whether any but church members should vote or hold office, and they unanimously agreed to an affirmative answer.

After the vote was taken one man, supposed to be the Rev. Samuel Eaton, filed a dissenting opinion in which he asserted that magistrates should be men fearing God; that the church is the company whence such men may ordinarily be expected; and that they that choose them ought to be men fearing God; only he held that "free planters ought not to give the power out of their hands so far that they could not resume it if things were

not orderly carried." But the planters unanimously agreed that "Church members only shall be free burgesses, and that they only shall choose magistrates and officers among themselves"; and they made a Fundamental Agreement in which it was stated that "Church members only shall be free burgesses and they only shall choose among themselves magistrates and officers to have the power to transact all public civil affairs of this plantation, of making and repealing laws, &c." And they provided that no one should be received as a planter into the plantation until he should subscribe this fundamental agreement, thus settling the supremacy of the church on a solid foundation.

When other towns afterward united with New Haven in forming New Haven Colony, such as Guilford, Branford, Milford, Stamford and others, there were some objections to the rule that only church members should vote; and in Milford especially there were some who had already voted who were not church members, and whom Milford desired to have retain the franchise, but the point was yielded.

In the first code of laws established by New Haven Colony it was provided, "That none shall be admitted freemen or free burgesses within this jurisdiction, or any part of it, but such planters as are members of some one or the other of the approved churches of New England; nor shall any such be chosen to the magistracy, or to carry on any part of the civil judicature, or as deputies or assistants to have power, or vote in establishing laws, or in making or repealing orders, or to any chief military office or trust; nor shall any others but such church members have any vote in such elections."

In establishing the General Court for the Colony, which both made and administered the laws, this constitution provides that, "This court thus formed shall first with all care and diligence from time to time provide for the maintenance of the *purity of religion* and *suppress the contrary* according to their best light and direction from the word of God."

This duty the court proceeded vigorously to perform, and in the record of each important conviction and sentence duly appears a reference to the Scripture rule upon which it is founded. Afterward, a written code of laws was adopted, founded, however, as were those of Hartford and Massachusetts, on the Scripture and especially on the laws of Moses.

There may have been at the time of the first establishment of a court—October 25, 1639, five hundred persons in New

Haven. In an ordinary country town of that size now, two criminal and two civil trials before a Justice of the Peace would often make an average court docket. A sketch of the business of the court during the first two years from its establishment may give some idea of the thoroughness of the enforcement of law.

The community consisted for the most part of planters with their families and servants. In seating the meeting house, the grades of honor recognized are Governor, Deputy Governor, Mr., Goodman, and plain William Jenkins, with no additional title. The severity of the court was principally exercised against the servants, although there is nothing to indicate that a planter would have received any favor if brought before it for cause, and in some cases a Goodman appears as the culprit.

The day after the establishment of the court an Indian was whipped for attempting to escape; two days after another Indian was condemned to death and the next day was beheaded and his head placed upon a pole in the market place. This was the 29th of October, 1639. The court usually sat once a month. November 3d a theft case was adjourned. December 4th two servants who had stolen five pounds seventeen shillings from their master's chest on the Lord's day in meeting time were whipped and ordered to make double restitution. At the present time they would have used the money to secure their bondsmen and failed to appear. The complainant would have had to bear the loss and the State would have taken the profit. The blue laws were better.

The same day another servant, having been drunk and saucy, and having been whipped for it by his master, was set in the stocks; and another servant, for drunkenness and abuse of his master, was whipped.

February 5, 1640, a debtor not being in funds, was ordered to pay five shillings a week until the debt was paid. Another judgment in a factorizing process was rendered, and still another judgment for simple debt, and another judgment in an action on a case for damage by hogs. Isaiah, Captain Turner's man, was fined five shillings for being drunk on the Lord's day; another was set in the stocks for Sabbath breaking and stealing his master's wine; a boy was whipped for stealing; a man whipped for drunkenness, and there was an acquittal on a charge of drunkenness and a suspension of judgment on another charge, all different men.

February 18th, Goodman Love was whipped and banished—being disorderly himself and encouraging others to disorderly

meetings. George Spencer being profane and disorderly and getting up conspiracy to carry away small boat, was whipped and banished. Three others were whipped and two of them ordered to wear irons.

March 5th, one man freed from his chains; two others to wear them a week longer.

April 3d, four men fined for felling trees without leave, one for building a cellar and selling without leave, and a judgment for debt.

June 3d, Edward Bannister, for contempt of court, and therein the ordinance of God, fined twenty shillings; another, for slander, whipped and banished, being also a pestilent fellow and a corrupter of others.

June 11th, legal prices fixed on all kinds of building materials, different kinds of day's works and many other things: laborers not to take more than two shillings a day in summer or above eighteen pence in winter.

July 1st, one man fined for neglect of watch; three men whipped; a case of scoffing at religion, not sufficiently proved, dismissed with admonition and caution; and a charge of false measure in line adjourned.

August 5th, two men fined for neglect in warning the watch.

September 2d, three judgments for debt and another case referred to arbitrators, and a fine for neglecting the watch. (The business of the watch was to keep a lookout for attacks from Indians.)

October 6, four men fined for neglect of watch; one man fined for drinking wine to excess; two men fined for affronting the court.

October 23, division of land; two deacons take their choice of location, as near as may be to the town that they may the better attend their office.

November 4, Arthur Halbridge, for failing to furnish full measure of lime, is ordered to pay two-fold for all that is charged to be lacking, and from henceforth to take no work by great nor burn any lime to sell.

December 2d, Thomas Franckland, for drinking strong liquors to excess, having drinking meetings in his cellar, and contempt of court, was whipped, fined twenty shillings, and deprived of his cellar and lot, but allowed to occupy the lot and stay on the plantation during good behavior. The same day Andrew Low, Jr., was whipped for stealing and Sabbath breaking; another ordered to be whipped for stubborn carriage to

his master, and execution of sentence suspended during good behavior; and a master ordered to forfeit two months of a servant's time for striking him on the head with a hammer.

January 6, 1841, in a case of a rope loaned by Crane to Thompson and lost by Cogswell, ordered that Thompson make it good to Crane and Cogswell satisfy Crane.

April 7th, John Reader was fined forty shillings for exacting greater wages for twenty days' work than the legal price; a man fined for neglect of watch, and a servant girl, having falsely accused a man of stealing some cloth, was adjudged to pay him twice the value, "according to the law of God in that case."

May 3d, another careful adjusting of prices. Mowing well done, salt marsh, not above three shillings six pence an acre; fresh, by the acre, not above three shillings. Diet for a laboring man with lodging and washing, four shillings six pence by the week.

It was clearly the opinion of the forefathers of New Haven that low prices for goods and labor were beneficial to the community, and laws on this subject were all in that direction.

July 5th, judgment in a civil suit and fine for neglect of watch.

August 4th, a servant for slandering his mistress adjudged to tender her suitable satisfaction; judgment for debt in two cases; Andrew Low, Jr., again ordered to wear a lock.

September 7th, judgment in civil suit.

In the third year of the court a man was put to death upon the authority of and in the manner specified by Leviticus 20:15, without trial by jury and with no pretense of any other statute. In the fourth year several women and girls were whipped, one of them for theft.

No statutes, proper, had as yet been passed in general criminal matters. The orders were mostly in regard to the price of goods and labor and forbidding or allowing of sale of property, etc. The government was a paternal one. For rules of conduct and authority to punish, the court relied upon the Scriptures and the precepts of morality. From the sentence of the court there was no appeal.

If the Judges of the Superior Court of New Haven were bound by no fixed code of laws, and there was no appeal from their decisions, they would occupy very much the same place and have the same power as the first court of New Haven. Altogether, the discipline seems to have been thorough but just.

The double restitution in case of theft or fraud to be paid to the sufferer, and not to the State, was certainly more just and more honest than the present practice, and the whipping which was always additional was after the custom of the time. They had no jail. Their judges were able and just men. The description of ancient New Haven injustice contained in a historial novel recently written by a New Haven man is a travesty worse than that of Peters and more inexcusable.

The excess of rigor of the New Haven code above that of the other New England Colonies was probably more in the enforcement than in the letter, although New Haven Colony exceeded the others in making open and wilful Sabbath breaking punishable with death.

The Sabbath laws of New Haven according to Peters were as follows:

"No one shall run on the Sabbath day, or walk in the garden or elsewhere, except reverently to and from meeting.

"No one shall travel, cook victuals, make beds, sweep house, cut hair or shave, on the Sabbath day.

"No woman shall kiss her child on the Sabbath day or fasting day.

"The Sabbath shall begin at sunset on Saturday."

These and the other blue laws of Peters are a forcible illustration of the old adage as to falsity and truth. They have been solemnly published as veritable statute laws of New Haven in newspapers and periodicals from Peters' day to the present. They have been so published in the City of New Haven within five years. Peters wrote them as a satire. He says they were never printed. He has often been accused of forgery, but it would be as just to accuse Artemus Ward or Major Jack Downing of that crime.

They are partly true. Sabbath began at sunset on the previous day in accordance with the Mosaic law; and running or walking, except to and from meeting, traveling and cutting hair, were doubtless forbidden.

The Sabbath law actually passed in New Haven Colony, as appears from an edition printed in 1656, was as follows:

"Whosoever shall profane the Lord's day, or any part of it, either by sinful servile work, or by unlawful sport, recreation, or otherwise, whether wilfully or in a careless neglect, shall be duly punished by fine, imprisonment, or corporally, according to the nature and measure of the sin and offense. But if the court upon examination, by clear and satisfying evidence, find

that the sin was proudly, presumptuously, and with a high hand, committed against the known command and authority of the blessed God, such person therein despising and reproaching the Lord, shall be put to death, that all others may fear and shun such provoking rebellious courses; Numb. 15:30-36 verses."

A careful search of the capitol laws passed in Hartford in 1642 and of the Complete Code adopted in 1650 fails to disclose any reference whatever to the Sabbath or Lord's day.

The founders of New Haven found no warrant in Scripture for trial by jury, and no jury trials were had there for the first quarter of a century. They strenuously resisted union with Hartford, as thereby those not church members would obtain a vote and a voice in the government, but were at last forced to submit. And in 1665, upon union with Hartford, Sabbath breaking ceased to be punishable with death, and a court with a jury was held in New Haven.

There has been no opportunity for a trial of a case of ordinary Sabbath breaking by a jury, however, in this State until 1895, when the General Assembly for the first time allowed appeals in cases of Sabbath breaking, profane swearing and drunkenness; but the charter of New Haven has protected it from this innovation, and to this day the people of New Haven hold their ancient privilege of having Sabbath breakers condemned without trial by jury.

So far as the blue laws enforced a rigid observance of the Sabbath upon Scriptural grounds, their essential spirit was embodied in the legislation of Connecticut after the union of the colonies, but it has grown feebler, and at last has passed away. Until within eighty years the statutes of this State have provided that no person "shall go from his or her place of abode on the Lord's day unless to attend upon the public worship of God unless upon works of necessity or mercy, on penalty of eighty-four cents." Also, that "All and every person and persons in this State shall and they are hereby required, on the Lord's day, carefully to apply themselves to duties of religion and piety, publicly and privately." Also that absence from public worship should be punishable by a fine of fifty cents; any one accused to be deemed guilty unless he or she prove to the satisfaction of the justice that he or she had attended worship; that any one fined for profanation of the Lord's day, and failing to pay the fine, should be whipped; that no appeal in cases of Sabbath breaking should be allowed.

Until the first of August of this year, all recreation whatso-

ever upon the Sabbath day, which would include walking, driving, bicycling, etc., has been forbidden by law; thus holding fast, in letter, to the ancient prohibition of the laws of New Haven.

But the triumph of Hartford would seem to be at last complete, and the General Assembly of the present year, at the instance of a committee of Congregational churches, and in pursuance of the opinion above cited, written by a Hartford judge, has repealed the penalty against recreations which are not sports. All sports and all labor other than works of necessity or mercy are still prohibited.

It should be noted, however, that every elector of the State is sworn to support the Constitution of 1818, which still declares it to be the "duty of all men to worship the Supreme Being, the great Creator and Preserver of the universe." And for a quarter of a century after the adoption of this Constitution, and until within fifty years, the statutes of our State contained the enactment that, "It shall be the duty of citizens of this State to attend public worship of God on the Lord's day."

Contracts made on Sunday between the rising and the setting of the sun were wholly void, and money loaned on Sunday could not be recovered and property delivered on Sunday need not be paid for, until 1889 (Finn *v.* Donahue, 35 Conn. 216; Cameron *v.* Peck, 37 Conn. 555), when the General Assembly encroached on the rigor of the old law in this respect by enacting that "No person who receives a valuable consideration for a contract expressed or implied by him on Sunday, shall defend any action upon such contract on the ground that it was so made, until he restores such consideration." And in 1895 it was held in Horton *v.* Norwalk Tramway Company, 66 Conn. 272, that a passenger might recover against a street railway company for negligence resulting in injury to him while riding for pleasure on Sunday, although the opinion admits that the term "recreation" as prohibited by Section 1569 may be used in a sense which would include taking a ride for pleasure in a street car.

The General Assembly of this year in abolishing the prohibition of recreation and increasing the penalty against labor and sports has emphatically declared that Sunday laws are to be respected.

There is no space in this article to consider the legislation or decisions of other States. Taken as a whole, they are nearly all coming to the conclusion which Connecticut has nearly reached,

and which is sustained by the general approval of the people as well as of the courts, and which is briefly stated in State *v.* Miller, *supra.*

The ends now sought in Sunday legislation are substantially these: Sunday to be observed and protected as a day of rest for the whole people, and so that those who are subject to the control of others shall not be obliged to work. Works of necessity will include those necessary for the health and comfort of the people. To these, there is a continual attempt to add those necessary for the reasonable enjoyment of the day after the individual preference of each. The mass of the people recognize Sunday as a day of religious worship and their feelings would be shocked, and the value of the day as a day of rest diminished, if sports as such were allowed to be generally carried on; and legislatures and courts are, thus far, practically agreed upon the prohibition of sports.

The enforcement of a Sabbath law as founded upon Scripture, and as a carrying out of a command of God to keep holy the day, has practically ceased, and State *v.* Miller has written its epitaph; nevertheless, our forefathers of New Haven acted as they believed, and the "blue laws" of New Haven, rightly understood, will always be a monument to the earnestness, the sincerity and the religious zeal of New Haven's founders.

Henry G. Newton.

NEW HAVEN, November 1.