REVIEW

of C. Milner's Reply to the Report of Investigating Committee on the charges against Rev. Thos. Todd.

To the Editor of the Post.

SIR,—Your issue of Thursday last, (25th inst.) contains a lengthy reply, by C. Milner, Esq., to the Report made by the undersigned to the Moncton Baptist Church and published in the same issue of your paper. It is our duty to review that reply and this we shall endeavour to do fully, calmly and dispassionately, with the single purpose of enabling the public to know the very truth of this matter, and without entering into any retaliatory or recriminatory altercation with Mr. Milner.

The Committee in their Report could not properly enter into details, their duty being to state concisely and clearly the *conclusions* at which they had arrived. We are therefore glad of the opportunity to meet the specific allegations of Mr. Todd's assailants, and doubly glad that these special charges have been put forth by Mr. Christopher Milner, who was counsel for Mrs. Sears, and whose opportunities and disposition qualify him to make out the worst possible case against the Rev. Mr. Todd. We presume that if we can show that Mr. Milner has failed to fasten any wrong-doing on the Rev. Mr. Todd, it may be expected that all fair minded men, who may have had doubts hitherto, will appreciate the baseless character of the slanders which have been in circulation, and that even the professional propagators of scandal will see it necessary to select some other subject for their future attention.

Mr. Milner, in opening his reply, says that the Committee "court notoriety and invite criticism." The Committee do not invite criticism for the sake of controversy, but, having a thorough knowledge of the whole matter, they do not shrink from a discussion of the facts, and prefer that men should openly state their objections to the Report rather than to circulate their slanders privately in such a way that they cannot be met to be refuted. If Mr. Milner inferred that the Committee are willing to challenge the successful contradiction of their Report, he has arrived at a very correct conclusion.

Mr. Milner says that the Report "seeks to impress the fact that Mr. Cahill was the primary agent of Mrs. Sears and that Mr. Todd was merely an assistant to him. * * * Mr. Todd and Mr. Cahill with indecent haste went to Mrs. Sears a day or so after her husband's funeral and jointly solicited her to allow them to wind up her husband's estate. * * * Mrs. Sears gave it into their hands jointly: these facts were proved by Mr. Josiah Tingley, who was present, and by Mrs. Sears."

There is nothing in the evidence taken by the Arbitrators to show that there was any agreement defining the relative positions of Messrs Cahill and Todd. Mr. Josiah Tingley swears that he was at Mrs. Sears' house at the time referred to but he does *not* swear that the business was given to them *jointly*. Some time after this, when letters of administration had been taken out, Mrs. Sears published the following notice in the *Borderer:*

NOTICE.—All persons having demands against the Estate of the late Joseph Sears, of Sackville, are hereby requested to present their claims, duly attested, within three months from date,—and all persons indebted to said estate will please make immediate payment to the Subscriber, or her Agent, John E. Cahill, Esq.

SARAH SEARS, Administratrix.

Sackville, Oct. 10, 1871.

It will therefore be seen that at this early date Mr. Cahill was alone recognized as Agent.

Mr. Todd never in any transaction of any importance acted alone and on his own reponsibility, but Mr. Cahill frequently did. The Report is therefore correct, in defining the position of Messrs Cahill and Todd as Agent and Assistant—not that these relations were so fixed at the outset, but that, as the business was done, that came to be the relation practically sustained by them.

In reference to the remark as to the "indecent haste" of the gentlemen in tendering their services, it is simply necessary to observe that there is some discrepancy in the evidence, as might be expected from persons speaking five years after the event. Messrs. Cahill and Todd deny the "indecent haste" and probably their recollection of the circumstances would be as clear as that of Mrs. Sears. The point, however, is not material.

Mr. Milner next says:

"The debts of the estate requiring a sale of the real estate, I was in 1871-72 employed by creditors of the estate and prevented the whole real estate being sold in one lot as the "Sears Farm" as was intended by these gratuitous agents. This scheme being suggested, if Mr. Cahill is to be believed, by the Rev. Mr. Todd, to enable them to buy it cheaply and make a good thing out of it by a re-sale, and that Mr. Cogswell was spoken to provide what money they might require. Any comment here is unnecessary."

This story is not sustained by any facts brought out by the arbitration and it is hardly necessary to say that, if it were true, evidence on the point would have been submitted by Mr. Milner. If the Rev. Mr. Todd is to be believed (and we think him at least as well worthy of belief as Mr. Cahill) the story is utterly unfounded; the only occurrence that bears the slightest resemblance to that stated by Mr. Milner being a suggestion made at one time that if certain pieces of marsh did not bring nearly their value, they should be bid in for the widow and any money needed obtained from Mr. Cogswell.

Again Mr. Milner says:

"Mr. Cahill did not attempt at several times to pass the accounts of the Estate through the Probate Court subsequent to Mr. Todd's removal from Sackville. One account only was attempted to be passed and was passed. It was made up from Mr. Todd's book, and was, as the Committee say, wrong and unfair to Mrs. Sears.

In 1876, after Mr. Todd and Mr. Cahill had entered into Bonds of Arbitration with Mrs. Sears, Mr. Cahill with whom Mr. Todd was then acting in close concert, filed an account, which Mr. Todd paid Counsel to get passed the Probate Court for the avowed object of defeating the arbitration."

Herein, as afterwards appears in Mr. Milner's reply, two accounts are referred to—one in '73 and one in '76—though he has the presumption to say that *one account* only was attempted to be passed. Our statement was that three several attempts were made to pass the accounts and though it is possible that the three accounts were not actually before the Court, it is certain they were made up and that our statement was substantially correct. These accounts might have been made *from* Mr. Todd's books, but they were not made in *agreement* with the books, and Mr. Todd's assistance was not sought or had. The statement in the second paragraph is wholly untrue. Mr. Todd did not pay Counsel to get account passed through Probate court for the purpose of defeating the arbitration, or for any other purpose. From first to last, Mr. Todd had nothing whatever to do with any accounts made up for Probate or attempts to get them passed.

Next Mr. Milner says;

"If Mr. Killam did act on his own mere motion in becoming liable to pay $2,300 for Mr. Todd it is a most curious coincidence that on the Saturday previous, Robert Bell, Esq., called on, and ascertained from me on behalf of Mr. Todd my willingness to settle, and, as I anticipated from what he said that some of Mr. Todd's friends from Moncton would be here on Monday I was not surprised when Mr. Killam came in and settled."

This is plausibly put but there is absolutely nothing in it. In the midst of the sore distress brought on Mr. Todd by Mr Milner's unwarrantable application of the harrassing powers given him by the law, it is not unnatural that his friends should seek some means of affording relief, and it was with this thought that Mr. Bell called upon Mr. Milner. He was not asked to go by Mr. Todd, nor had he any authority to settle, nor did he intimate to Mr. Milner, directly or indirectly, that Mr. Killam or any one else was coming to settle. Mr. Bell had no knowledge of Mr. Killam's intentions in the matter

We quote again from Mr. Milner's reply:

"The accounts of the estates so far as kept by Mr. Todd are not correct in every particular. They can hardly be called accounts at all, and it is impossible from them alone to determine the assets of the estate and their disposition, and I am surprised to find that men who must know something of book-keeping stultifying themselves by saying they are correct in every particular and cannot be assailed."

The Committee did not state, or mean to be understood to say, that the accounts were kept in accordance with the principles of correct book-keeping, but simply that the entries made by Mr. Todd were correct entries. The charge against Mr. Todd *implied* that his accounts were falsified, and the Committee, directing attention to this point, found that *not one* entry was incorrect or calculated to be misleading to any person who understood accounts. The books were not kept in the manner prescribed by the schools, but how many do keep books in that way? The Committee's enquiry on this point, of course, was to ascertain if the entries were correct records of the business done and we repeat that they are "correct in every particular and cannot be successfully assailed." We further state that at the time Mr. Todd left Sackville any clear-headed business man *could* "determine the assets of the estate and their disposition" from Mr. Todd's books, aided by his explanations, without which no attempt should ever have been made to prepare an account for Probate.

Referring to the letter in the *Post* of August 3rd, on which the committee commented, Mr. Milner says:

"I wrote that letter, as is known, and I had express authority of Mrs. Sears to publish anything over her signature that I thought proper. She approved of what I had written as she declared before the arbitrators. The was personally known to at least one of the Church Committee, so that the insinuation intended to be conveyed in stating Mrs. Sears did not write it, is as mean as it is false. Mr. Todd himself attempted to get Mrs. Sears to disavow it; he had the indecency to go, during the progress of the arbitration, to where Mrs. Sears was staying and persistently urging her to sign a certificate he had prepared. I was sent for by her friends and arrived in time to prevent his effecting his object."

It is satisfactory to have Mr. Milner acknowledge that he wrote that letter, and to find him confessing that under a general authority to write what he "thought proper," he had the audacity to publish the gross charges therein contained as if they came direct from Mrs. Sears. If that good woman ever gave him authority to write what he thought proper, she evidently soon found that her confidence was misplaced and the authority abused, because she afterwards declared to Messrs. Todd and McKenzie as follows:

"I distinctly state that I never wrote that letter, nor did I see it till it appeared in the *Post*, neither did I sign the letter and I am heartily sorry that such letter ever was published. Mr. C. Milner wrote that letter."

This disavowal was not sought for the purpose of affecting the issue of the arbitration, which it could not influence in any way, but for the purpose of satisfying Mr. Todd's brethren that there were no facts to warrant the letter known to Mrs. Sears and that it was really part of a lawyer's efforts to work up a case. The dramatic coloring given to the scene by Mr. Milner, we are assured, has nothing to warrant it.

Again Mr. Milner says:

"That letter I affirm does contain true and well-founded charges in every particular, except in one or two slight and unimportant typographical errors, not affecting their character. I repeat that in Mr. Todd's Ledger, or whatever it may be called, on page 58, in a list there of accounts presented against the estate Mr. Todd wrote over the name of Christopher Estabrooks, $10.42. "Pd. T. T." and over the name of Alex. Easterbrooks, $59.90. "Pd. T. T." And Mr. Todd and Mr. Cahill obtained from these parties respectively receipts of the amounts, which receipts were used by Mr. Cahill in the Probate Court in 1873, by which credit was given Mrs. Sears for such sums; that these sums were charged. by Mrs. Sears and Mr. Cahill against Mrs. Sears before the arbitrators and claimed, and upon their being disputed by Mrs. Sears' Counsel, these receipts were actually produced to prove the payments, and Mr. Todd swore he believed the amounts were paid, or else the accounts would not have been receipted. And Mrs. Sears was compelled to call both Chris. and Alex. Easterbrooks who proved they never had been paid one cent. The Church Committee now state that Mr. Todd's accounts do not represent he paid them. Will the Church Committee explain why Mr. Todd wrote "Pd. T. T." over an account, took a receipt for the amount and claimed credit for it before the arbitrators when nothing, as they now admit, was ever paid.

We are amazed to find Mr. Milner deliberately making such statements as these, knowing, as he must, how unfair they are. In the Ledger, as it is called, was a list headed "Accounts presented against the Estate," and in these Mr. C. Easterbrooks is down for $10.42, Mr. A. Easterbrook for $59 60, J. R. Ayer for $95.55, &c. &c. These accounts were paid by offsets, purchases at the auction, or cash, or part in one way and part the other. Whenever an account was fully paid and disposed of Mr. Todd used to write opposite the name "Pd. T. T.", meaning, as he stated on oath, that the account was finally disposed of and not that it was paid in cash. The actual amount paid in cash in any case was shown by his cash book. For instance, Mr. Ayer filed a claim of $95.55 but the actual amount paid him was $17.13. Opposite this name in the Ledger is written "Pd. T. T." but the cash book shows what amount was really paid, and it must occur to Mr. Milner, or any other man of ordinary intelligence, that if Mr. Todd had intended to falsify the accounts and to claim that he paid $95.55, he would have made the cash book show this amount. If disposed to be fraudulent he would hardly keep a cash book that would convict him at sight. In point of fact, therefore, the entries in the Ledger and Cash book, both proved to be correct, are the strongest possible proof of Mr. Todd's purpose to do right. In the cases of the Messrs. Easterbrooks, as stated in the Report, the Cash book (to which, of course, we look for actual payments made) shows nothing paid thereon. We presume that any accounts, however settled, would be receipted, and it is possible (though we cannot find it in the evidence) that some years after the event Mr. Todd, speaking from memory, would presume that the amounts were paid as shown by the vouchers. Mr. Todd, however, had nothing to do with the use made of these vouchers; he left Sackville in the Spring of 1873 and never had any part in making up accounts for Probate, and he did not "claim credit" before the Arbitrators for any amounts which were not paid. Mr. Todd, of course, could not possibly prevent Mr. Cahill, or any one else, from using these vouchers, or receipted accounts, as he saw fit.

Mr. Milner next says:

"Mr. Todd did not keep correct accounts of his dealings of the Estate. Where has Mr. Todd charged himself with $775 received from David Wheaton, balance on a lot of marsh. Mr. Cahill always insisted until after Mr. Todd and he formed an alliance last summer, to defeat Mrs. Sears in the arbitration, by the proceedings in the Probate Court, that Mr. Todd had received and kept that money. Where has he credited the Estate with the ox sold to John Fawcett for $34; where the steer sold to Elijah Easterbrooks for $8.50; where the grass and account against John P. Tingley amounting to $62.50 How was it he charged the Estate with having paid Joseph Thompson $72.80 when Thompson swore he had only received $60.80. Todd and Cahill both swore they thought they had paid him $68. If the books are correct, why should they have charged Mrs. Sears with having paid $72.80, when they thought they had only paid $68, and as fact paid only $60.80. But why multiply instances; indeed when the Cash Book kept by Mr. Todd only shows a total of receipts of $2,378.45, and the Real Estate all sold in Feb., 1872, alone realized $10,849.00 leaving $1,470 unaccounted for besides the personal Estate, leaving a balance of some $1,000 to $5,000 wholly unaccounted for by his books."

Now if the object of this paragraph was simply to show that the books were not kept scientifically, we should admit the argument and dismiss the paragraph without further notice; but evidently it was Mr. Milner's purpose to convey the impression that the marsh, the ox, the steer, the hay, &c., were not accounted for and that the estate was defrauded to the value thereof, and evidently any person who has read the paragraph has so understood it. It is therefore necessary to pay some attention to these charges.

With respect to the marsh purchased by Wheaton the balance of $775 due thereon was arranged for Mr. Wheaton by Mr. Todd as a transaction purely between those gentlemen. Mr. Todd paid the estate the $775 in manner as shewn by his account submitted to the arbitrators and admitted to be correct. The sum of $300 was deposited with M. Wood & Son to the credit of the estate, $284 was paid to Mr. Cogswell, for the estate, as shewn by his receipt, and the balance was applied to the payment of other debts due by the estate.

With respect to the ox we quote the evidence of Mr. John Fawcett:

"I bought the ox from Mr. Cahill; don't recollect the price, think it was £3 or £3 10s. The estate was owing me $30. (Cross ex.) I won't swear that Mr. Todd and Cahill did not pay me $2.27 in June 1872."

The books show $2.27 paid to Mr. Fawcett and this, with the ox, evidently paid his claim, so that the estate got the proceeds of the ox.

In reference to the steer we quote the evidence of Elijah Easterbrooks:

"I got my pay in different ways. I got a cow and a pig at the sale—amounting to $23.15. I afterwards got a wash stand 95 cts and a box of nails 46 cts. There was a steer missing in the fall which Mr. Cahill said I might have for the same as the others were appraised at if I could find him. When I got the box of nails I agreed to pay $8.50 having found the steer in the meantime, and then we had a kind of settlement. I received about $23 left with E. Thomson for me by Mr. Todd. I received the balance of my account. The whole amount received was $62.67."

So much for the steer.

Mr. John B. Tingley had an account against the estate about $117 and the difference between that and $62.50 was paid him in cash. There was no dispute about this before the Arbitrators and no claim by any one that the estate did not get the $62.50 for the grass &c.

In reference to Joseph Thomson's account we quote his evidence:

(Witness shown an account) "I think this is my account. I think there was £10 turned with Mr. Wood for me. They paid me the balance all but £3. (Cross ex.) I don't keep any books in which I put down money received. They paid me some money. I don't recollect the amount. It might have been about $30. I will swear I took off $12 but I cannot say whether they paid me any interest or not."

Forty dollars turned with Mr. Wood and thirty dollars cash makes $70 so that Mr. Todd must have been nearly correct when he said he thought they paid him $68. Thomson does *not* swear (according to the Arbitrators' minutes of evidence from which all our quotations are made) that he received only $60.80.

We are at loss to know what Mr. Milner means by saying that the Cash book shows a total of receipts of $2,379 45. We find an account of sales in that book footing up $10,849 from real estate and some thousands of dollars from personal property.

Mr. Milner next refers to the settlement effected through the instrumentality of Mr. Killam, and declares that Mr. Todd did not work gratuitously. He adds:

"Mr. Killam claimed compensation for Mr. Todd, and in the settlement the sum of $362 was deducted from the balance due Mrs. Sears, as compensation allowed Mr. Todd and Mr. Cahill."

The settlement, published by Mr. Milner, shows an allowance of $362 for "services," but it does not say that any part of this was for Mr. Todd's services. Mr. Killam informs us that he did not claim "compensation for Mr. Todd;" but it is not difficult for any reasonable man to understand that he would desire to pay as small an amount as possible, and would not particularly care why the other side reduced the amount. Mr. Killam was paying money which neither he nor Mr. Todd owed, and very naturally he made the amount as small as possible.

The next matter of importance referred to by Mr. Milner is the following:

"The report of the Committee states they have been credibly informed that the arbitrators would have exonerated Mr. Todd financially and morally. I would have been astonished had I seen this statement in any other document, as I had reason to believe that no such conclusion had been arrived at; but I am surprised at the Editor of THE TIMES—one of such Committee—who was informed by Mr. —— one of the Arbitrators, on the Tuesday morning before his paper containing the report was published, that such statement was incorrect, that he allowed the report to go forth, knowing it contained this false statement, without in any way referring to and correcting it in the editorial notice he has given the scandal."

Mr. Stevens may, if he chooses, answer this reference to himself, but in regard to statement made by the Committee we have to say that even if one of the Arbitrators was still undecided on the point referred to, or even if he was disposed to go against Mr. Todd, which we have no reason to believe, still the Committee may have had "reason to believe" that the award would have exonerated Mr. Todd morally and financially. If, however, the Committee received wrong impressions in this particular, it is not a very serious matter; but as we understand that the Arbitrators, when the matter was taken out of their hands, agreed amongst themselves to say nothing of their purposes, we are not in a position to say anything more positive on this point.

Mr. Milner says:

"The Committee complains that the Rev. Mr. Todd has been "remorselessly persecuted." How! Did I remorselessly persecute him when I personally urged him before legal measures were taken, to settle with Mrs. Sears? That much-abused woman had been stripped of every cent and had not a dollar left to undertake lawsuits and fight Messrs. Todd and Cahill through the courts, and I was at all times solicitous to have a settlement. Finding that they intended taking advantage of Mrs. Sears' poverty by withholding from her even the $300 odd, which their Probate account admitted was in their hands, and by attempting to forestall an award by a decree of the Probate Court, I found after three months waiting that decisive steps were necessary. I submitted the facts to an eminent counsel, and his opinion amply sustained the course I had formed that active, legal steps should be taken. I sued them in the Supreme Court, I garnished the debts of Mr. Todd, and Mrs. Sears made complaint to R. Chase, Esq., against Mr. Todd for embezzlement of $775 from D. Wheaton, which did not appear on his books. I calculated he would not stand fire, that finding himself involved in the meshes of the Criminal Law he would make some restitution. The result justified my calculations. Mrs. Sears got part of her money by the gratuitous interference of Mr. Killam.

On this we have to remark:

1. That before proceedings were commenced Mr. Todd went twice or three times to Sackville and endeavoured to meet Mr. Cahill and Mrs. Sears' friends in order to rectify the accounts made up by Mr. Cahill. Mrs. Sears and others swore that Mr. Todd always seemed anxious to have matters explained and made right and that he never showed any disposition to avoid an investigation of the books.

2. That Mr. Todd always contended that he had not a penny of estate money, and the refore he, of course, would not consent to a settlement that involved him in any obligation to pay. If Mr. Milner urged a "settlement" of this kind Mr. Todd rightly declined. In point of fact, however, Mr. Milner's first act was to summon Messrs. Cahill and Todd to Sackville, threatening a suit in Equity, and when they went, it agreed to leave the matter to arbitration.

3. That, as we are advised, there was no attempt by any one to forestall an award by a decree of the Probate Court. The Probate Court purposely adjourned in order that the award might be made before the accounts were passed. Mr. Todd, however, had nothing whatever to do with the proceedings of the Probate Court in any way.

4. The reasons assigned by Mr. Milner for the harsh proceedings taken against Mr. Todd are not, we believe, correctly stated. Mr. Milner himself, after he had withdrawn the submission, informed Mr. Todd that he had so acted because the arbitrators were incompetent to properly perform their duties. And it has generally been understood that Mr. Milner by some means had ascertained that the award would not be satisfactory, particularly as Mr. Cahill had just put his property out of his hands in order to "forestall the award."

5. That with respect to Mr. Milner's "persecution" of Mr. Todd, we think that the reader will agree with us that the Committee's expression has been fully sustained. In this connection it may be well to say that while we believe that Mrs. Sears has been honest and conscientious, though greatly misled, as any woman ignorant of accounts might be, and while we can appreciate the fact that some of her friends also having failed to thoroughly scrutinize the books, may have honestly received erronous impressions, we cannot make the like remark in reference to Mr. Milner, as he must certainly have some knowledge of books and must have examined them thoroughly. We unhesitatingly assert that any clear headed man, with ordinary knowledge of accounts, after giving careful examination to the books, *must* arrive at the conclusion that Mr. Todd did his work honestly and fairly, and further that any such man could not fail to see that the items of property referred to in Mr. Milner's reply were properly accounted for. We have no doubt whatever that Mr. Milner relied upon persecution of Mr. Todd to obtain what he feared he might not get from Mr. Cahill; that, as he says, he calculated he would so harass Mr. Todd by throwing him into the meshes of the Criminal law, that he would not "stand fire" but would purchase his release by yielding to demands that Mr. Milner knew to be unjust. We resist the temptation to pursue this thought further, merely remarking that if Mr. Todd honestly owed anything to the estate there was no necessity for Criminal proceedings as he is able to pay and Civil proceedings would have compelled him to do so.

Mr. Milner, in conclusion, says:

"I am amazed at the Moncton Baptist Church placing the whole odium of the infamous transaction on Mr. Cahill when Mr. Todd from first to last was the partner in it. If not, why did he not in his zeal for the widow give me the benefit of his knowledge of the accounts at the very outset; why did he not then denounce Cahill as the robber of the widow, instead of uniting with him to defeat her? Need I answer why he did not?

In the report made to the Church, and in this review, the undersigned have endeavoured to say as little as possible respecting Mr. Cahill, whose innocence or guilt it was no part of our duty to determine. We could not help explaining the fact that although Mr. Todd offered to go to Sackville and assist in preparing accounts for Probate whenever asked to do so, he was never called upon and that those who undertook this duty without his aid, greatly blundered, either wilfully or ignorantly, and thus led to an immensity of trouble and confusion, all of which would have been prevented if Mr. Todd had been called upon in accordance with his offer. We do not place the odium of the whole transaction on Mr. Cahill; we simply say that Mr. Todd is innocent, and beyond that it was not our duty to enquire. As to the relation between Messrs Cahill and Todd we have already commented on that, and we have also explained that Mr. Todd, after two or three visits to Sackville and unsuccessful efforts to meet Mr. Cahill in the presence of Mrs. Sears' friends, was threatened with a suit in Equity and obliged to assume a defensive position. He then said, as any honest man would say, that though he had no money of the estate, if, in consequence of any negligence of his, or for any cause, he ought to pay any amount, he was willing to do so. Hence he consented to the arbitration.

We have now fully reviewed Mr. Milner's reply and in doing so have quoted nearly every section of that reply. And in submitting the whole case to the judgment of an intelligent public, we have only to add that if any honest, candid person is still in doubt upon any point not touched by Mr. Milner and herein explained, the undersigned, or any one of them, will be happy to give the needed information. Having gone to the very bottom of these transactions we *know* that Mr. Todd is entirely innocent of any wrong doing and this position we are able and willing to defend.

In this connection we may refer to the three column Editorial of the *Borderer* on this subject. We have carefully looked over that article and (excepting the abuse of Committee which we cannot descend to notice) we find nothing therein which is not fully treated in the foregoing review.

JOSEPH CRANDALL,
H. T. STEVENS,
JOHN MCKENZIE,
D. A. DUFFY.

Moncton, 29th Jan., 1877.