MASSES FOR THE DEAD

DECLARED LAWFUL BY THE HOUSE OF LORDS.

From Home papers just to hand we are enabled to publish in full the important judgment of the British House of Lords, on the validity of bequests for Masses for the dead, regarding which a brief cable message a short time ago informed us of the findings:—

Allowing the appeal of Cardinal Bourne and the Rev. Terence Donelly, the House of Lords recently decided that gifts of personal estate left by the will of Edward Egan to pay for Masses for the dead were valid. The testator, an Irishman, who had been a butler in London, bequeathed £300 to the Bishop of Ardagh, £200 to the Jesuit Fathers, Farm Street, £200 to Westminster Catholic Cathedral, £100 to the Dominican Fathers, Black Abbey, Kilkenny, and £100 to the Franciscan Fathers, Kilkenny, all the money being intended for Masses. Mr. Justice Eve had decided that the gift for Masses was void, and when Cardinal Bourne, representing Westminster Cathedral, and the Rev. Terence Donelly, for the Jesuit Fathers, appealed, the Court of Appeal upheld the decision. The case then came to the House of Lords. Catherine Broderick, of Kilkenny, representing the next-of-kin, was the respondent.

The Lord Chancellor, moving that the appeal should be allowed, said it was a difficult and extremely important case. Their Lordships could not, in his view, escape the duty, anxious as it undoubtedly was, of overruling decisions which had been treated as binding for generations. Unwilling as he was to question old decisions, he would be able, if his view prevailed, to reflect that their Lordships would not within a short period of time have pronounced to be valid legacies given for the purpose of denying "some of the fundamental doctrines of the Christian religion," and have held to be invalid a bequest made for the purpose of celebrating the central Sacrament in a creed which commanded the assent of many millions of their Christian fellow-countrymen. They would have the satisfaction of deciding that the law of England corresponded upon this important point with the law of Ireland, of their great Dominions, and of the United States of America. A decision based, as he believed this to be based, upon a sound view of the law, might reasonably appeal to these two powerful considerations of policy, as against the admitted impolicy of disturbing old conclusions.

Having reviewed the Acts of Parliament since the time of Henry VIII., Lord Birkenhead said the authorities had led him to the following conclusions:—

1. That at common law Masses for the dead were not illegal, but, on the contrary, that dispositions of property to be devoted to procuring Masses to be said or sung were recognised both by common law and by statute.

2. That at the date of the passing of 1 Edward VI., c. 14, no Act or provision having the force of an Act had made Masses illegal.

3. That 1 Edward VI., c. 14, did not itself make Masses illegal, or provide that property might not thereafter be given for the purpose of procuring Masses to be said or sung. It merely confiscated property then held for such and similar purposes, and subsequent legislation was passed to confiscate property afterwards settled to such uses. This was certainly true of 1 Eliz., c. 24, and might be true of 1 Geo. I., c. 50.

4. That, as a result of the Acts of Uniformity, 1549 and 1559, Masses became illegal. The saying or singing of Masses was a penal offence from 1581 to 1791, and no Court could enforce uses or trusts intended to be devoted to such uses.

5. That neither contemporaneous exposition of the Statute 1 Edward VI., c. 14, nor any doctrine closely related to it in point of date, placed upon it the construction adopted in West v. Shuttleworth. The principle of that decision was certainly affirmed in Duke and in Roger on Legacies, but the authorities cited on its behalf not only did not support it, but in some cases contradicted it.

6. That the substratum of the decisions which held such uses and trusts invalid perished as a consequence of the passing of the Catholic Relief Act, 1829, and thereafter their Lordships might give free play to the principle *cessante ratione legis cessat lex ipsa.*

7. That the current of decisions which held that such trusts were *ipso facto* superstitious and void began with West v. Shuttleworth, and was due to a misunderstanding of the old cases.

If there had been, in fact, an unbroken line of authorities dating back 300 years, then it would have been a matter for grave discussion whether the House would consent to break that chain. The authorities, however, were only uniform in result. Some depended upon statutes, some on the principle that no religion other than that by law established could be recognised and protected by the Courts, while others depended upon a misunderstanding of the ancient decisions.

"If," said the Lord Chancellor, "my view is well founded, citizens of this country have for generations mistakenly held themselves precluded from making these dispositions. I cannot conceive that it is my function as a Judge of the Supreme Appellate Court of this country to perpetuate error in a matter of this kind. The proposition crudely stated really amounts to this, that because members of the Catholic faith have wrongly supposed for a long period of time that a certain disposition of their property was unlawful, and have abstained from making it, we, who are empowered and bound to declare the law, refuse to other members of that Church the reassurance and the relief to which our view of the law entitles them. I cannot, and will not, be a party to such a proposal."

The conclusion, therefore, so far as he was concerned, was that a gift for Masses for the souls of the dead ceased to be impressed with the stamp of superstitious use when Catholicism was again permitted to be openly professed in this country, and that thenceforth it could not be deemed illegal. This was not to say that there were now no superstitious uses, or that no gift for any religious purpose, whether Catholic or other, could be invalid. Such cases might arise, and would call for decision when they did arise. But the cumulative effect of the various Emancipation Acts was to remove from the doctrines of the Catholic faith every stigma of illegality. Gifts *inter vivos* or by will might now be made to build a Catholic church or to erect an altar. He was content that his decision should not involve their Lordships in the absurdity that a Catholic citizen of this country might legally endow an altar for his community, but might not provide funds for the administration of that Sacrament which was fundamental in the belief of Catholics, and without which the Church and the Altar would alike be useless.

Lords Buckmaster, Atkinson, and Parmoor concurred.

Lord Wrenbury dissented, and asked whether it was expedient and in accordance with principles upon which the House had often acted that they should substitute their own opinion upon construction for an opinion of such antiquity, and one which had been so long unchallenged, as Lord Cottenham's decision in 1835. If complete freedom of religious belief, which all would, he thought, to-day be desirous of giving, ought to be supplemented by removing illegality from dispositions such as were in question in this case, the matter was, he thought, one for the Legislature.

The appeal was allowed. The judgments occupied over three hours in delivery.

Endeavor to avoid with the most exquisite delicacy all which could displease the Holy Ghost, and hinder in you the entire accomplishment of His designs.—*Mother M. of the Sacred Heart.*

The Catholic Church to-day is the only perfect type of orderly government in the world. She alone in a coherent and definite form proclaims and defends authority, the essential principle of orderly government, as a sacred and inviolable institution.