

Religion, Land and Laws in Eighteenth Century Thomond

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The Penal Laws in regard to property hung like a sword of Damocles over Catholics in eighteenth century Ireland. Both landlords and tenants who remained faithful to their church felt threatened and insecure. They resorted to subterfuge to protect themselves and a number changed their religion to escape the threat to their property. This is an effort to look at their effects in Limerick and Clare.

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The publication of the eighteenth century convert rolls by the Irish Manuscripts Commission has made accessible to students and scholars a valuable source for local, family and national history. The admirable work of the editor, Eileen O'Byrne, presents in alphabetical order the names and quite often the addresses of those who formally changed from the Roman Catholic Church to the Established Church from 1703 to 1838¹. The list includes those who conformed according to the full legal process which involved actual conformity, taking the sacrament in a Church of Ireland parish church and the getting of a certificate from the bishop. There were some who did not get the certificate and therefore are not recorded in this list though from contemporary newspapers there is evidence of their change of religion. This is true of a Catholic priest, Patrick Prendergast, who became a Protestant in Limerick in 1775 and is not mentioned in this list. Another priest from Limerick who also changed religion is on the roll but his association with Limerick is not there mentioned. He was Rev. Murtagh O'Hurley who conformed at Caherconlish in 1769.

Indeed one of the difficulties with the Convert Rolls is that many of those who changed religion did so in Dublin and not in their native area. In giving a Dublin address they make it difficult to identify them. Perhaps their choice of a Dublin church for their conformity may have been to avoid any obloquy in their native area. In many cases, however, it may simply have been tied in with certain legal processes in regard to the protection of their property which had to be taken in the Court of Chancery. These arose out of effort on the part of Catholics to protect themselves and their property from the Penal Laws passed in the reign of Queen Anne.

Under those enactments no Catholic could take a lease of property which exceeded thirty-one years. Also the estate of any Catholic whose property had escaped confiscation under the Cromwellian or Williamite settlements could not pass to the eldest son of the owner, but had to be divided equally between his sons. To avoid this latter subdivision of Catholic - owned estates the eldest son could become a Protestant - a temptation which was too strong for a number of families. In regard to leases Catholic tenants on holdings sometimes felt under threat that a "Protestant discoverer" would find a flaw in the letting and, by petition to Chancery, could take it over. Thus one finds evidence of "discoveries" against many Catholics in this period. In regard to property in County Limerick there are about eighty-two bills of discovery recorded in the Registry of Deeds in the King's Inns in Dublin. Not all of them are real efforts to oust Catholics. Some of them are part of an elaborate smoke screen which lawyers built to protect Catholic clients. Others represent instances where a tenant became a Protestant. Conversion to the Established Church did not in itself protect the tenant

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¹E. O'Byrne, (ed.), *The Convert Rolls: Ir. M.S.S. Comm.*, Dublin 1981.

because if he had taken a lease which was prohibited by law while he was a Catholic it still remained illegal when he became a Protestant. To rectify this position he had an collusive arrangement to have a "discovery" against himself by a Protestant who promptly put it in trust for the conforming tenant. Thus these deeds, because of their proximity in date to the dates of conformity, help to identify some of those listed in the Convert Rolls with Dublin addresses. Thus it is clear that the John Hiffernan who conformed on 4 February 1732 and whose only identification in the Convert Rolls is "Dublin" is the John Hiffernan of Ballinlandy and Curraghturk, Co. Limerick, against whom a "discoverer" named Thomas Cunningham filed a bill three days later².

In all there were one hundred and two persons with addresses in County Limerick listed on the original rolls for the period of the Penal Laws down to 1789. It is worth noting that the first recorded Limerick conformist was Margaret Napper, the wife of Thomas Napper of Limerick City. Her change of religion in 1711 was perhaps occasioned by the fact that her Protestant husband would suffer legal disabilities because of being married to a Catholic. Indeed this probably explains to some extent why one quarter of those listed in the rolls from Limerick were women. After 1711 there was no other name on the Convert Rolls from County Limerick until 1729 when Ellen (or Mrs. Ellinor) Rice of Limerick appears. Thus the first quarter of a century of the restrictions on Catholics holding property had little effect on conversions to the Church of Ireland in Limerick or indeed in any part of Ireland. The 1730s, however, saw a quickening of the pace though of course throughout the country the rate of change was never more than a trickle. In Limerick in this period it was usually but one per year though in 1732 and 1734 there were two who changed while 1739 saw three names on the roll. Some of these were significant. Large landowners who were Catholics were beginning to seek to become part of the establishment. The conformity of John Fitzgerald, the eldest son of the Knight of Glynn, in August 1730, was the beginning of a change for that family. On his death other members of the family who were described by a "discoverer" as "all Papists" at the time John made his will, promptly conformed in 1740 and 1741 to inherit the property. Upon their conformity they had a collusive "discovery" in trust lodged against themselves to protect their inheritance³. Another landed gentleman who conformed in this period was one Standish Grady of Dublin. It would appear that he was the same Standish Grady whose address was recorded as Cahir, Co. Limerick, in a deed of discovery in regard to property in Co. Clare in 1743⁴.

In the ten years from 1741 to 1750 sixteen people from Limerick are recorded as changing religion. In the succeeding decade the number rose to twenty-four. It is clear that the rate of change continued to increase for a further eighteen years, for about sixty Catholics became Protestants in that period. This was consistent with the pattern throughout Ireland and reflects not so much a tightening up of the Penal Laws but rather the accumulation of other pressures. Perhaps the decline in religious antagonisms owed something to the atmosphere of the age of reason which was influenced by the French writers of the time. The easing of the implementation of the laws against the Catholic clergy must have helped. Perhaps the greatest impact arose from the rise in the value of property. Rents in the 1760s were four to five times as high as they had been fifty years before. This meant that there was a great incentive to a "discoverer" to find a loophole in an early lease at a low rent so as to take over the old tenancy when rents had risen. Equally the tenant had more reason to take steps to protect his lease when it had become more valuable to him.

²Registry of Deeds, Memorial of Trust, 22 Feb. 1732, Bk. 68, p. 462, no. 49070.

³Registry of Deeds, Memorial, Bk 107, p. 310, no. 74275, dated 28 Nov. 1741.

⁴*Ibid.*, Bk. 111, p. 358, no. 76970.

By the 1760s, however, yet another factor had become apparent. This was the growing importance and liveliness of Irish Politics. The law which prohibited Catholics from voting in elections did not feel terribly repressive in the reign of George II who came to the throne in 1727. For much of his reign the political scene was very quiet and it was not until his last decade as king that the Irish parliament began to assert itself. There was an awakening of a form of colonial patriotism about in the 1750s which lent some allure to politics but, since general elections took place only on the death of the king, the Irish Catholic did not miss the franchise between 1727 and the death of the king in 1760 any more than did his Protestant neighbour.

The accession of George III in that year meant that a general election was needed early in 1761 and the growth of political awareness made it apparent that Protestant tenants who could vote could be a more valuable asset to landlords than Catholic tenants who were disfranchised. It is interesting to note that even before 1760 a landlord could bring some of his tenants with him to his church. In the case of Robert O'Callaghan of Shanbally near Clogheen, Co. Tipperary, he was a Protestant who was made governor of the county early in 1747. The fact that twenty-three people of the district over three consecutive Sundays in the following September and October conformed was probably allied to some considerable extent by the political ambitions which he was nursing at that time. Certainly he was to become a member of the Irish Parliament in 1756 and the increase in the number of his tenants who had votes enhanced his prestige among his neighbours.

Group conversions were to become more noticeable after 1760. With the general election pending in the beginning of 1761, one finds an example of ten men conforming in Kilmaine, Co. Mayo, in Christmas week 1760. The Honourable Peter Browne Kelly was grooming himself for a Mayo seat in parliament. His relations were well placed in the county to assist him with estates centred on Westport, Castlemagarrett, Breaffy and of course the Neale near Kilmaine. Sir John Browne of the Neale, the fifth baronet, or his eldest son, George, who was to succeed to the baronetcy in a couple of years, probably used some influence to secure the return of the candidate in that election. The Kilmaine conversions were thus not in vain though they did not ensure a permanent grip on the seat.

The increase in conformity because of that general election was quite remarkable. For the first time the numbers leaving the Roman Catholic Church to become Protestants in any one year since the opening of the eighteenth century exceeded one hundred. In fact a total of one hundred and fifty turned in the year 1761 in the whole of Ireland. The agitation in the early years of the reign of George III to have more regular general elections resulted in the acceptance that they should take place every eight years. This meant that, in an era of political activity coinciding with the American War of Independence, the rise of the Irish Volunteers and the removal of the restrictions of Poynings' Law on the Irish Parliament there were general elections at regular intervals. Also there were substantial benefits available from government for those who guaranteed support and who could muster votes. Each general election year from 1761 onward was to see an increase in the numbers coming on the Convert Rolls. Over the years the average rate of conversion to the Church of Ireland increased but election years were to be peak periods.

There was an added factor to Irish politic life seen in rival factions within the parliament, each struggling for power and patronage. This perhaps explains the interest which landlords had in having more and more tenants qualified to vote. Voting tenants were valuable assets in the hands of ambitious landowners and this may explain why some 210 persons conformed in the election year of 1768. This was a record number of conformists in any one year throughout the whole century, apart from 1783, also a general election year. Of course 1783 was an

exceptionally important year as the parliament had technically won independence the year before and the efforts to control it were considered by government to be of paramount importance especially in view of further Irish Volunteer activity. This probably explains why about 250 names were added to the Convert Rolls at that time.

Even within general election years there was a noticeable increase in the number of conformities during the months proceeding the election date. For example, almost one half of the religious changes in 1768 were recorded in the months of May, June and July. The dissolution took place in May so these months were the ones of most hectic political activity. Again in 1783, when parliament was dissolved on 25 July as expected, the number of conformities for the year were concentrated in the three pre-election months of June, July and August. Indeed 153 of 250 convert enrolments for the year took place in those three pre-election months. Similarly in 1790 the bulk of the entries in the Convert Rolls were made in March and April, obviously with an eye to the dissolution of 8 April and the subsequent election.

These concentrations of conversions to Protestantism indicate the political nature of a considerable amount of the changes of religion. The fact that there was an increased rate of change, even after the major repeal in 1778 of the most oppressive laws governing the length of lease which a Catholic could hold, indicates that despite the new right to hold not thirty-one year leases but 999 years lettings, there were other pressures on tenants to conform. These were most obviously related to the vote. The ten enrolments on 30 May 1768 in Annaduffe, Mohill and Cloone, Co. Leitrim, were probably associated with the collusive arrangement between two landlords, Nathaniel Clements and William Gore, to ensure their return to parliament⁵. In Co. Roscommon in 1783 one of the candidates for parliament was Arthur French of Frenchpark. The enrolment of twenty-two conversion, on his estates on 12 June of that year was clearly not unconnected with his electoral contest. Similarly one can be reasonably confident that the seven converts from Clontuskert, Co. Galway, whose names were enrolled in April 1790 were prospective voters for the local landlord, William Power Keating Trench. The election took place during May, and Trench was successful. The handful of voters which he garnered from Clontuskert was minimal compared to the seventy men without addresses whose conversions were recorded on 15 August 1783. With the predominance of names like McDonagh, Lee and Joyce among them one must suspect that they were being prepared for the Galway hustings which were just about to begin.

It is worth noting that once the Catholics were given the right to vote in parliamentary elections in 1793, there were no further conversions associated with the dates of casting votes. There is no evidence of any great concentration of religious changes in Limerick related to election years. However there was one group enrolment which took place on 2 October 1784. Four people with the address Montpelier, were recorded as conforming on that day, Thomas Buckley, James Freeman, James McMahon and Laurence Tobin. This small group from one area changing religion on one day appears to be independent of any immediate political election and must apparently arise from another cause. Similarly, in regard to changes of religion in Co. Clare, there is nothing to indicate any concerted movement in years of general elections. However, in both counties the overall pattern of increasing numbers conforming in the second half of the eighteenth century compared with the numbers in the first half is obvious. It is worth noting that the number of conformists listed from Co. Clare was slightly greater than from Co. Limerick, about 20 per cent more. There were also more "discoveries" under the Penal Laws recorded in regard to Clare property than in regard to Limerick. In both counties the numbers were above average. The

⁵M. Bodkin, "Notes on the Irish Parliament of 1773", *Proc. Royal Irish Acad.*, 48, c (1942-3), 201.

number of enrolled converts from Co. Clare was exceeded by two counties in the country, Galway and Tipperary. Cork had slightly fewer than Clare but its converts outnumbered those of Limerick, which tied with Mayo for joint fifth place among Irish counties. Munster as a whole had more people changing religion than any of the other provinces. Galway, Mayo and Roscommon also had high figures but Leitrim and Sligo were more on a par with the counties of Leinster which, apart from the substantial Dublin city numbers, were on average about one third of the returns from Munster. The Ulster counties had even fewer still changing religion.

Perhaps one of the reasons for there being higher numbers of converts in some parts rather than others arose from the survival for longer in certain areas of a number of pre-Cromwellian families as landowners. This was true of Clare and of counties in Connacht where a bond existed between landlords and their tenants which did not exist in areas where the seventeenth century confiscations had brought in a new landlord class. Thus in those areas Catholics had more to protect than had those in Ulster for example. Also there was more scope for collusion in evading the rigours of the Penal Laws in counties in which there existed some tradition of empathy between landlords and their tenants. Even when landlords changed religion under the pressures of the period, they usually had close family relations and ties with kinfolk who remained Catholic. This, however, could not fully protect either tenants or landlord from legal cases being taken against them in regard to their property.

Even conversion to Protestantism did not save John Hiffernan from a law case in regard to his property in Co. Limerick. He had conformed on 16 July 1746 and had enrolled his name on the Convert Rolls on 17 November of that year. Yet more than twenty years later, in 1768, a "discoverer" took him to court querying the technical details of his conformity. In fact he had to have documentary evidence of each step in the formal process of his change of religion, otherwise he would have lost his property. In fact he was able to prove that he had complied fully with the legal requirements and so escaped from the "discoverer", a man named Ambrose⁶. This case was a serious effort to take over a property unlike many of the other "discovery" cases. For example, that taken against George Stacpoole of Annagh in Co. Clare by a discoverer named Charles White of Dublin in February 1742 was a collusive effort to protect the Stacpoole estate in the barony of Ibrickan against any claim that George's conversion to Protestantism on 24 June 1731 had not fulfilled all the legal requirements⁷. The same cannot be said of the "discovery" by Joseph Thompson at exactly the same period against Thomas McMahon of Ballykilty, Co. Clare. In that case, however, it appears that Edmond Comyn, who had conformed on 23 November 1740, was being made a trustee to protect the rights of McMahon who had been a faithful Catholic⁸.

Not all "discoveries" were made with the intent of damaging Catholics. Indeed the process was used amicably as a means of giving title to a purchase on occasion. This explains why Nicholas Green of Ballymachrist, Co. Limerick, allowed his name to be used as a "discoverer" in regard to the property of the late Dermot O'Brien of Corbally, Co. Clare. Both O'Brien and his widow, Mary, were Catholics and the latter was selling her interest for £700 to Charles McDonnell of Kilkee. Green in fact acted in trust for McDonnell⁹. Subterfuges like this were commonplace in the law of property of the eighteenth century and make for many difficulties for the modern research worker. They also show the strength of Catholic fears under the Penal Laws in regard to their holdings. The Acts of the reign of Queen Anne hung like a sword of Damocles over Catholics who held real estate.

As the century progressed and the threat of a return of the Stuart monarchy receded, a

⁶G. E. Howard, *Several Special Cases on the Laws Against . . . Popery*, Dublin 1775, pp. 165-175.

⁷Registry of Deeds, Memorial, Bk. 107, p. 65, no. 73205.

⁸*Ibid.*, Bk. 104, p. 370, no. 73401 (26 Feb. 1742).

⁹*Ibid.*, Bk. 72, p. 42, no. 51380 (30 July 1733)

more liberal view began to manifest itself especially among the English administration in Ireland from about 1750 onwards. Nevertheless it took the emergence of a Catholic organisation, the Catholic Committee, to win support for repealing the property laws. In the end it was a crucial law case appealed to the House of Lords in England that made a break through. The case was taken by Thomas Wyse of Waterford and the verdict found that the rigid interpretation of the penal laws as given by the Irish courts for well-nigh seventy years was not correct¹⁰. It was this result which brought about the relaxation of the code and the passing of the 1778 act which allowed Catholics on certain conditions to take leases for as much as 999 years. By then some one hundred and twenty cases under the laws had come before the courts in one form or another in regard to land holdings in Clare, while in Limerick there were about ninety instances of the impact of the laws.

The passing of the 1778 Relief Act did not, however, finally draw the curtain on the oppressive aspect of the legislation. Even further relief acts of 1782 left problems still to be decided although Catholics were by then allowed to purchase estates. As late as 1789 a case came before the courts in regard to an estate in County Clare purchased by Thomas Roche after the repeal of the laws of Queen Anne. Roche died in 1786 leaving his brother, Stephen Roche of Limerick, as his heir. Under the relief legislation Thomas Roche should have taken the oath of allegiance within six months of the purchase of the estate to qualify as purchaser. However he had not come to Ireland and died in Rotterdam in 1786. His brother and heir, to protect his inheritance, had "discoveries" taken out against his title so as to test the matter in the courts. Indeed he had employed at least two separate "discoverers" just in case one died during the course of the action. If that happened he had the second in reserve so that no outside party could step in and take a case on his own behalf. It was decided by the court that the six months grace after the purchase should begin from the date of setting foot in Ireland rather than from the date of the deed under which the property was bought¹¹. In the circumstances Stephen Roche got his inheritance and his family were to become very important in the commercial life of Limerick. This must have been the last of the bills of discovery under the Penal Laws.

There were a few law cases after the relief acts were passed in which actions under the Penal Laws were called into question. For example in a case between George Davis and Thomas Oliver heard in March 1784 the dispute centred on the lands of Broghill, Co. Limerick, which was part of the Orrery estate. The main arguments on title involved compliance with the laws which by that time were totally amended¹². Twenty years later, in 1804, a case in the Chancery Court between the descendants of one James O'Gorman and of William and Nicholas Comyn hinged on the earlier anti-Catholic laws. The lands in question at this time were Moyle and Ballynote in Co. Clare¹³.

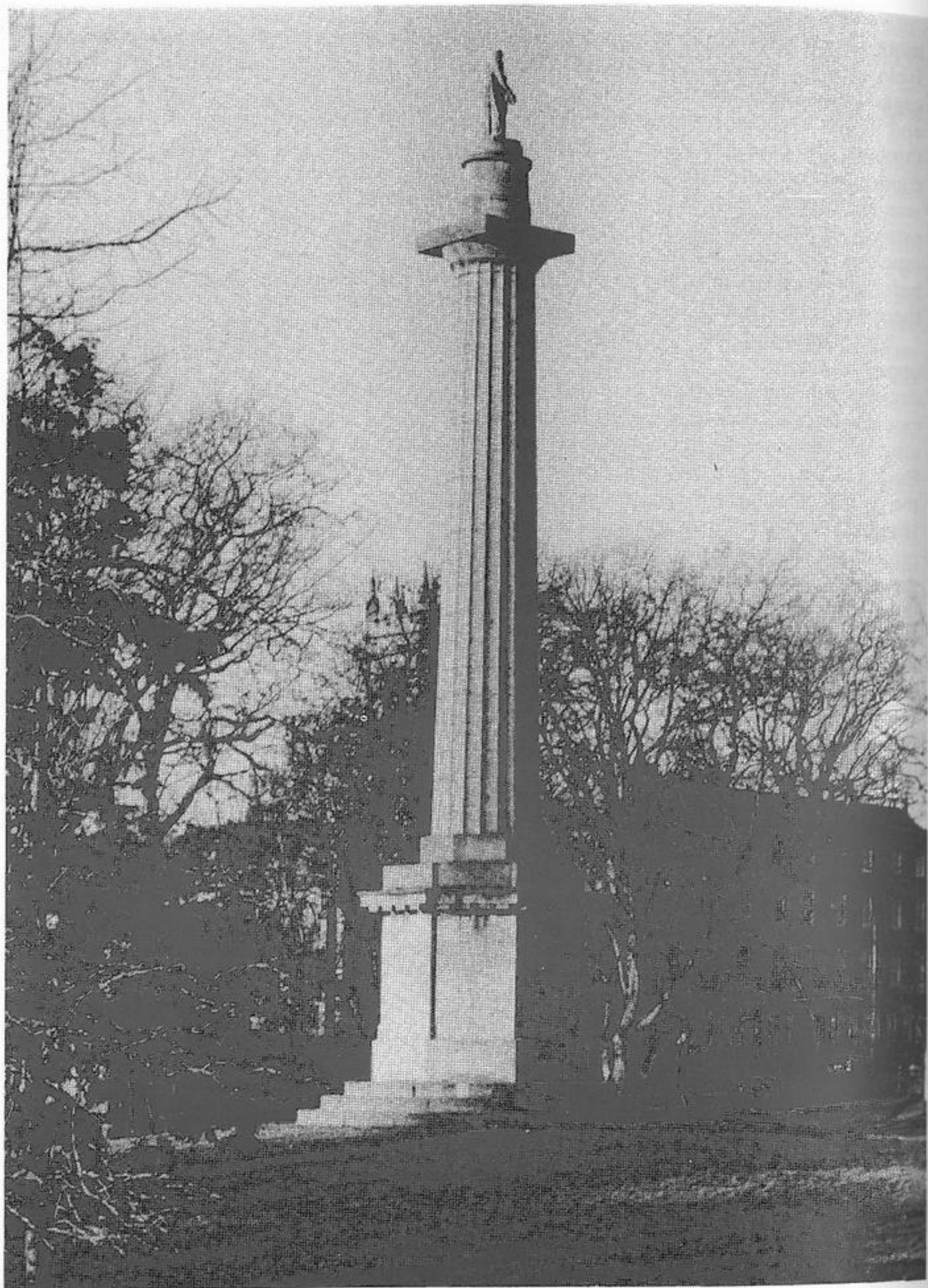
Indeed, the Penal Laws cast a long shadow, and their results were to be seen particularly when the land question became a predominant one in the nineteenth century. The laws were a cause of insecurity in their time but perhaps one of their major effects was in the reduction of the amount of land held by Catholics throughout the eighteenth century. This came not from confiscation so much as from the change of religion by families trying to protect their inheritance. The divide between Protestant landlords and the Catholic tenants became more clearcut in the country. The ties which had existed over centuries on many estates were broken. Thus the landlord system became totally alienated from the mass of the Irish People.

¹⁰G. E. Howard, *op. cit.*, pp. 357-364.

¹¹John Brady, *Catholics and Catholicism in the Eighteenth Century Press*. Maynooth 1965, pp. 272-3, Registry of Deeds, Memorials, Bk. 402, p. 264, no. 264819 (22 Oct. 1788).

¹²Wm. Ridgeway, *Report of Cases Upon Appeals*, Vol. 1 (1795) p. 1-15.

¹³J. Schoales and T. Lefroy, *Reports of Cases . . . in the High Court of Chancery* (1806), Vol 1, pp. 137-150.



Illus. 1. Spring Rice Memorial, People's Park, Limerick.

(Photo: John O'Brien)