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## **Return to Humbie: minister and heritors in the eighteenth century**

[Abstract: The context of a significant eighteenth century court case involving the minister, session and heritors of the East Lothian parish of Humbie is reviewed using a range of documentation.

Although the case has been seen as a significant one in the development of poor relief, the history of the dispute suggests that a broader struggle, perhaps particularly prevalent in the hinterland of Edinburgh, with its population of 'enlightened' lawyers and landowners, between the relative rights of church and the secular authorities, was overlaid with degrees of local personal animosity. These factors rather limited the impact of the legal decision.

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The parish kirk in the East Lothian parish of Humbie sits in an idyllic woodland location, nestling in the bend of a burn. It seems an unlikely site for a bitter conflict between minister, session and heritors over the course of some thirty years in the first half of the eighteenth century. We know of this conflict because it resulted in a case before the Court of Session which features in discussions of the operation of the Scottish Poor Law. Rosalind Mitchison used the decision to argue that it had two consequences. One was that it gave heritors the right to manage poor relief, when the custom had been for the kirk session to manage this on their own. The second was that it saw a shift in the nature of records kept, such that separate books of account for poor funds were kept. The case, decided in 1751, 'saw the change in the administrative responsibility for the Scottish poor law. From now on poor-law affairs were to be run more formally, kept in separate books from the general session register, and vetted in legalistic spirit by the heritors'.<sup>1</sup> As Mitchison later pointed out in a more detailed review of the circumstances surrounding the case, there were specific local

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<sup>1</sup> Rosalind Mitchison, 'The making of the old Scottish poor law', *Past & Present*, 63, 1974,88.

circumstances which might have explained why the decision was regarded as an extraordinary one.<sup>2</sup> This is borne out by two aspects of the practices of kirk sessions across the country. One is that it is difficult to find sessions changing their procedures. In most cases they appear to have carried on with their usual practices of managing the collection, investment and distribution of money for the poor, and heritors seemed content to let them do so.<sup>3</sup> The second was that separate money registers long pre-dated Humble. The practice originated in the hinterland of Edinburgh and gradually spread across the country during the eighteenth century. Even so, an analysis of the surviving records indicates that it was still only to be found in just over a quarter of parishes by the end of the century.<sup>4</sup> Some areas, notably the north east, remained wedded to combined discipline and money registers right through the period. Humble, then, perhaps attracts attention largely because it figures in records of legal decisions. Despite this, it is a fascinating example of the tensions intrinsic in the division of responsibilities between heritors and sessions, as well as having inherent interest in its own right. Because of this, it is worth returning to the case in more detail than was available to Mitchison.

One problem in telling the story is that it comprises a number of inter-twined strands, some better documented than others. As well as the kirk session and presbytery minutes, there were a number of court cases, some of which produced printed documents. In addition, a number of documents survive in the papers of Lord Milton, who acted as an arbitrator in a family dispute. These records are extensive, but even so, they are partial in two senses. One is that, of course, the church records give the perspective of that institution, although they appear to have been compiled faithfully. The same cannot be said of the legal records, where the main secular contenders, the

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<sup>2</sup> Rosalind Mitchison *The Old Poor Law in Scotland: The Experience of Poverty, 1574-1845*, (Edinburgh, 2000) 60.

<sup>3</sup> J. M. McPherson, *The Kirk's Care of the Poor, With Special Reference to The North-East of Scotland*, (Aberdeen, c.1945); Alistair Mutch, *Religion and National Identity: Governing the Church of Scotland in the Eighteenth Century* (Edinburgh, 2015).

<sup>4</sup> Alistair Mutch, 'Data mining the archives: the emergence of separate books of account in the Church of Scotland 1608-1800', *Scottish Archives*, 18, 2012. 78-94.

Hepburns of Humbie, seem to have been particularly unreliable and untrustworthy witnesses. However, comparison of the records can help us to disentangle some of what happened. Unfortunately the records are partial in another sense. Often documents, such as letters, are referred to in minutes, but their contents are not recorded. Not all the printed legal statements have survived, so that we are forced to reconstruct that side of the case from the objections that are made to it. On top of these problems of evidence, the story is extremely complex, with large numbers of interested parties. It cannot be claimed, therefore, that this is a complete or 'accurate' account of the facts of the matter, which are probably beyond complete reconstruction. However, there is sufficient material to suggest the main lines of fracture.

The article starts with an outline of the parish before an extended discussion of the activities of the two main heritors, John and James Hepburn of Humbie. Their antics will indicate something of the character of the men that the minister and session faced. They also indicate their litigious nature and rather cavalier approach to their debts, factors which are significant later. We then look at a number of early points of tension between the Hepburns and their kirk session: their debts to the session and their attempts to impose a schoolmaster. We also examine the attacks on the personal character of the minister, which resulted in his vindication by the General Assembly. This then frames the struggle over a contested mortification, or trust fund, which was to support the same schoolmaster, who by this time had come over to the side of the session. A legal counter-attack followed that resulted in the eventual legal decision, the consequences of which seem to indicate the vindictive nature of the heritors. The history of the dispute suggests that a broader struggle, perhaps particularly prevalent in the hinterland of Edinburgh, with its population of 'enlightened' lawyers and landowners, between the relative rights of church and the secular authorities, was overlaid with degrees of local personal animosity. These factors rather limited the impact of the legal decision.

HUMBIE AND THE HEPBURNS

Humbie was (and is) a largely agricultural parish, which in the eighteenth century featured sheep rearing on the foothills of the Lammermuirs in the south of the parish and improved arable land on the lowerground. The parish was, by the time of the Statistical Account, a large grain producer for market. It was also noted for extensive woodland areas, which we will see below were worked both for timber and for bark for the tanning industry. In 1755 the population was, according to Webster, 570.<sup>5</sup> This population was scattered across the parish, with no significant concentration. In 1759 there were eleven heritors in the parish, with Hepburn of Humbie having the highest rental, £98 11s 8d out of a total of £324.<sup>6</sup> Amounting to nearly a third of the rental value, this was by far the biggest holding, with only two others, Christie of Keith and Henderson of Leaston, having rentals of over ten per cent. With a combined total of nearly sixty percent of rental values these three were the major secular actors in the parish, although there were tensions within their ranks. Many of these were generated by the particular character and activities of the Hepburns.

That the Hepburns had some standing in the county, despite their often questionable activities, might have owed a good deal to their Presbyterian pedigree. The estate entered the Hepburn family in the mid-seventeenth century. Adam Hepburn, the grandfather of John Hepburn, the laird at the beginning of our story, had been a Senator of the College of Justice and a significant figure in the turbulent events of the seventeenth century.<sup>7</sup> John had played a minor part in the service of the government in 1715 when in his position as a deputy lieutenant he had, together with Doctor Sinclair of Hermandston, resolved to go 'to the house of Mr Hepburn of Keith, a zealous Jacobite, against whom they appear to have entertained hostile feelings'. In the event, Humbie did not turn up and so missed the confrontation in which the doctor and his servant were injured and one of Keith's younger sons killed.<sup>8</sup> While not playing a conspicuous part in the defence of the

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<sup>5</sup> Revd Henry Sangster, Humbie, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Haddington/Humbie/6/156/>

<sup>6</sup> National Library of Scotland, MSS.17728 Milton papers, 142, Statement of proportions due by heritors of £37 6s 1d spent on repair of church and manse 2 March 1759.

<sup>7</sup> George Brunton and David Haig, *An Historical Account of the Senators of the College of Justice*, (Edinburgh, 1836), 311

<sup>8</sup> James Browne, *A History of the Highlands and of the Highland Clans; with an extensive selection from the hitherto inedited Stuart Papers*, Volume 2 (London: A. Fullarton, 1852), 288.

Presbyterian Whig cause, therefore, his family standing might have played some part in his evasion of the consequences of his actions in 1719. The minister of Humbie reported to his session in 1724 that he had been striving to find out from the presbytery 'what might be necessary anent his [Humbie's] satisfying discipline for his guilt of murdering his servant William Boyd and his fornication with Annabelle Scot' five years before.<sup>9</sup> At the same time, the first indication of Humbie's reluctance to pay up the money he owed for poor relief was made. His evasion of church discipline continued through the rest of the decade, with the minister striving but failing to get assistance from the presbytery.<sup>10</sup> What they could do was to bar him from taking communion. In 1727, following his marriage to Elizabeth Hoster in 1725, which was claimed to have made him a reformed character ('the said laird of Humby's behaviour especially since his last marriage in Anno 1725 has been in all respects very regular') an appeal was made to the presbytery to allow him to take the sacrament.<sup>11</sup> However, a committee reported in 1728 that they would 'would not give advice to admitt him to Sealing ordinances unless Some more publick satisfaction was made than he inclined to give as they were made to understand and therefor that Affair behooved to lye as it was'.<sup>12</sup> Whether Humbie ever was admitted to communion is not apparent from the session minutes, but these events clearly coloured his tempestuous relations with the session.

What also conditioned the responses we cover below was his attitude towards both debts and to his own son. In 1737 he wrote to a Mr Congalton assuring him that money he owed him was safe but that 'I Cannot answer your demand at present, some of my principle tenants having suspended their [rents]'.<sup>13</sup> Two years later, the Edinburgh merchant Charles Crokot, to whom Humbie was indebted in two personal bonds of the sums of 1,300 and 2,000 merks, sought legal

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<sup>9</sup> National Records of Scotland (NRS) CH2/389/2 Humbie kirk session minutes (1715–1734) 17 September 1724. I have expanded contractions in the minutes and modernised certain spellings. I refer to the parish throughout as Humbie, but I have left the spelling as 'Humby' where it appears as such in the historical material.

<sup>10</sup> NRS CH2/389/2 4 June 1727

<sup>11</sup> NRS CH2/185/11 Presbytery of Haddington minutes 1718-1730, 4 June 1727.

<sup>12</sup> NRS CH2/389/2 11 August 1728.

<sup>13</sup> National Library of Scotland (NLS) MSS.6415 Pitfiranne Papers, f.74 John Hepburne, Humby to Mr Congalton, 28 November 1737.

recompense. Humbie accepted that he had contracted the debts but that, as the estate was entailed, he should not have done and so they could not be pursued. 'The Pursuer's Debts,' ran his response to the legal action before the Court of Session, 'being contracted contrary to the prohibition contained in Humbie's Title to the Estate, was by the irritant Clause annulled, and could not be brought to have a real Effect over the Estate'.<sup>14</sup> Despite this, Crokot received a declaration in his favour but was unable to have it enforced. 'I must think it very hard,' he declared, 'if the Defenders, by refusing to compear when they are legally cited, shall have it in their power to elude the Process'.<sup>15</sup> However, that was indeed the result, with the Lords of Session refusing the application.

Behind this cavalier approach to his debts was a long running dispute between John and his son and heir James. James was born in 1708 and so was seventeen when his father remarried. Perhaps tensions with his stepmother were behind his being forced to leave the family house three years later without, he claimed, 'one Shilling out of so good an Estate either for his Education or Maintenance'.<sup>16</sup> The dispute drew in Andrew Fletcher of Milton as a mediator, with agreement being reached in 1735 for James to have the produce of the woods of Humbie.<sup>17</sup> Despite this agreement, two years later Humbie was back in court with a claim that he could not pay the rent due as it had been attached by his creditors. The case went all the way to the House of Lords in 1737, with Humbie's case being rejected.<sup>18</sup> Then in 1739 James took further legal action against his father, claiming that 'his breaking down the Fences of the said Woods, and for destroying the same by driving in his cattle, and interrupting the Pursuer in the possession of the Woods, by threatening

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<sup>14</sup> NLS, MSS.17728/124 Milton papers Printed Information for Charles Crokot Merchant in Edinburgh against John Hepburn of Humbie, Esquire, 5 February 1739

<sup>15</sup> NLS MSS.17728/126 Printed petition of Charles Crokot against John Hepburn of Humby, James Hepburn younger of Humby and the other Heirs of Entail, 20 February 1739

<sup>16</sup> NLS MSS.17728/98, Petition James Hepburn to Lord Milton 1732

<sup>17</sup> NLS MSS.17728/ 100 Memorandum of Andrew Fletcher of Milton, 1735

<sup>18</sup> NLS Advocates Library, Cases heard in the House of Lords between 1715 and 1743, James Hepburn, Gentleman, Appellant and John Hepburn of Humbie, Esq, Respondent, 115.

Persons who came to buy Timber with Prison, &c,' had meant that 'the Pursuer's Sale was lost and ruined'.<sup>19</sup> His father retorted that James 'had causelessly abandon'd his father's Family, where he was welcome and well received'.<sup>20</sup> His case, however, failed, 'which has cost us a good fortune of money'.<sup>21</sup> Hence Humbie was deep in debt, something which no doubt coloured his actions with regards to his obligations to the church. It also meant that he left an estate burdened with debt when he died in 1743. His son appeared to carry on his methods of avoiding his obligations as well as the propensity to resort to legal action. In 1754 James was served with a petition by his sisters Elizabeth and Helen alleging that although he had been served as heir he had refused to pay up either the principal or interest of a bond drawn up in their favour of 1729.<sup>22</sup> It was thus a pair of litigious and debt-ridden heritors that the kirk session was forced to deal with, as well as a father and son who appeared to be short tempered and devious in their actions.

#### ADMINISTERING POOR RELIEF

Before we consider the details of the Humbie case, it is worth a brief discussion of some aspects of the kirk's role in poor relief. Under the Reformation settlement, despite the aspirations of reformers that church revenues be dedicated to education and poor relief, the tiends were captured by the leading landowners.<sup>23</sup> The heritors collected this money as part of their rentals, but out of it were required to pay the stipend of the minister, repair the church and pay for a parish school and schoolmaster. Meanwhile, the church bore the responsibility for collecting and distributing money to support the poor: those unable to work through age, sickness or infirmity. The position of heritors in

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<sup>19</sup> NLS MSS.17728/122 Printed minutes James Hepburn younger of Humbie against John Hepburn elder of Humbie 26 January 1739.

<sup>20</sup> NLS MSS.17728/122 Printed minutes James Hepburn younger of Humbie against John Hepburn elder of Humbie 26 January 1739.

<sup>21</sup> NLS MSS.17728/127, John Hepburn to Milton, 3 April 1739.

<sup>22</sup> NLS MSS.17728/129, Petition of daughters of late John, Elizabeth and Helen, plus children of son William and late Elizabeth Cockburn for 16,000 merks in bond of 23 January 1729, 1754.

<sup>23</sup> On the operation of the Scottish Poor Law, R. Cage., *The Scottish Poor Law 1745-1845*, (Edinburgh: Scottish Academic Press, 1981); McPherson, *Kirk's Care*; Mitchison, *Old Poor Law*.

supporting these groups and their involvement in decisions was somewhat ambiguous and in practice many were content to leave the kirk to carry on with the often-onerous duties of assessing eligibility for relief. The sums raised came from a number of sources, such as regular congregational giving and legacies left to the church. In some parishes these could amount to substantial sums being accumulated. In an age before secure and reliable banking systems, kirk sessions were faced with the challenge of finding a 'good hand' for their investments. Many lent money on bond against the security of heritable property, often to the heritors but, around urban centres, to merchants and others.<sup>24</sup> To give an idea of scale, in Humble in 1743 an inventory of capital stock indicated a total stock of £7,000 Scots (so around £645 sterling).<sup>25</sup> Of this considerable sum, eighty per cent was held by seven bond holders. As well as the amount then owing by Humble which we will explore below, the other bondholders included two Edinburgh advocates as well as a Writer to the Signet, a partnership between a brewer and baker, and a local tenant farmer. The fact that some £700 Scots was owing in interest on these bonds, two of which were seven years in arrears, gives an indication of the fragility of some of these loans. The balance of the session's funds was in unsecured bills, six of which were for smaller amounts. That such money could easily be lost in adverse trading conditions is indicated by the following minute in 1725

The Session considering that Mr David Watson & Charles Stewart in Edinburgh who had twelve hundred Merks of the poors money principal in their hand due by bond with a year's rent ['annual rent', i.e. interest] thereon having both broke & by their bankruptcy the Session could get nothing but some cloths Muzlings and other Several goods from the relick of Charles Stewart after a process at law for that effect & these goods on hand and perishable if not exposed to sale the Session are advised to expose them at a rowping at Edinburgh to be duely intimate for that effect.<sup>26</sup>

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<sup>24</sup> Alistair Mutch, 'The business of religion: lending and the Church of Scotland in the eighteenth century', *Journal of Scottish Historical Studies*, 37(2), 2017, 136-154.

<sup>25</sup> NRS CH2/389/3 Humble kirk session minutes (1734-1750), 21 April 1743.

<sup>26</sup> NRS CH2/389/2, 3 February 1725.



It was often the case that sessions preferred to lend to local heritors, whose basis in landed property was thought to offer more security. How far that was a misplaced belief is clear in the events at Humbie. However, the kirk's involvement with often substantial sums had two implications. One was an increasing demand by some heritors for involvement in the disposition of such money, in part so that they could avoid further calls on them by way of assessment for the relief of the poor. The second was to do with the nature of record keeping by sessions, especially the keeping of separate books of account. In most sessions the collection of money, seen as part of the Christian duty to support believers, was recorded in the same registers that also contained details of cases of discipline. The accurate and complete recording of proceedings was central to Presbyterian ecclesiology, with its focus on order and self-conception as a set of courts that paralleled and complemented secular courts. The problem was that the intermixture of discipline and accounting hampered the analysis of income and expenditure, especially when such was demanded by heritors. So there was the gradual emergence of separate books of account, as when in 1720 the session at Humbie recorded that 'The Elders received a New paper book to keep a double of the collections & Mortcloth money & of debursements which was ordered to be done'.<sup>27</sup> These twin questions, of the involvement of heritors in financial decisions and their right of access to church records, formed central parts of the events at Humbie, events that, while they culminated in the court case of 1751, had rumbled on for some thirty years before they came to a head.

#### HERITOR AND KIRK SESSION AT HUMBIE

As noted above, the first signs of problems came with the minute in 1719 that Humbie had not paid up interest on a debt of 3,000 merks for four years. He accepted that he owed a further 600 merks, for which he presented another bill.<sup>28</sup> The session's money was secured on the wood on Humbie's

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<sup>27</sup> NRS CH2/389/2, 12 January 1720. On the emergence of books of account, Mutch, 'Data mining'.

<sup>28</sup> NRS CH2/389/2, 7 January 1719.

property, which they were disturbed to find had been cut and sold in 1722.<sup>29</sup> In the following year Humbie told the minister that there was to be a meeting in Edinburgh 'of his friends & managers were to be anent paying his debt & that if the Session would Spare a while as the rest of the Creditors all should be completely paid upon which the Session was pleased'.<sup>30</sup> However, matters had still not been settled by the time of a meeting in the following year. If that meeting settled Humbie's other debts, it had no impact on his debt to the session, which was growing. In 1728 Humbie owed nine years interest on a principal of 3,900 merks.<sup>31</sup> Despite promises to both the session and presbytery, Humbie had still not paid up by 1729, when Joseph Douglas of Blackshiel reported that he had put proposals to creditors and Humbie, but they had been rejected. 'It is his opinion,' the minutes record, 'with submission that the Session should use all legal & effectual diligence and the more speedily it would tend to the more Benefit of the poor'.<sup>32</sup> Accordingly, they unanimously agreed to put papers in hands of their agent 'being sorry that after so long delay and many meetings no proper security has been ever yet offered the Session for the poor's money notwithstanding Humbie's repeated offers to the Presbytery that he was to do so'.<sup>33</sup> Legal proceedings were accordingly brought, proceedings which, as we have seen, also paralleled the disputes between Humbie and his son. The case went to the Court of Session, where the parties were encouraged to reach agreement. Such an agreement was drawn up promising that if diligence against Humbie was suspended he would commit to making regular payments. However, even now, Humbie sought to put pressure on elders to detach them from the minister. He presented a paper asserting that horning against him would be suspended which purportedly had been signed by five elders as a body. The elders, however, asserted that this was not the case and that the paper contained false statements that they had not agreed to.<sup>34</sup> Humbie also sought to claim, despite the

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<sup>29</sup> NRS CH2/389/2, 14 January 1722.

<sup>30</sup> NRS CH2/389/2, 14 April 1723.

<sup>31</sup> NRS CH2/389/2, 27 August 1728.

<sup>32</sup> NRS CH2/389/2, 16 February 1729.

<sup>33</sup> NRS CH2/389/2, 16 February 1729.

<sup>34</sup> NRS CH2/389/2, 7 December 1729.

evidence, that the money he owed was part of a mortification, rather than a debt he had incurred. This raised the question of where the deed of mortification, as well as some of the session's records, were:

the Kirk Session cannot get to the bottom of it because that Humby's father David Hepburn borrowed up the Records of the Kirk Session from Mr James Hamilton Minister of Humby in the year 1699 as Mistress Hamilton his Relict yet alive has often declared And that it is certain the said Records are still kept in Humby's Charter chest by those who saw them lately there as well as from other evidences And therefore the Session are of opinion that Advice should be taken how the said Records may be recovered.<sup>35</sup>

The session therefore had further legal action to pursue, as well as trying to hold Humbie to his agreement. Accordingly, when the session's agent sought in 1732 to recover the monies the court had determined were owed to them, Humbie refused unless the legal costs he had incurred were deducted.<sup>36</sup>

The state of negotiations between session and principal heritor also have to be seen in the context of two counter-attacks launched by Humbie during this period, counter-attacks which sought to challenge the session's authority as a corporate body and the minister's personal character. The first was Humbie's claim in 1730 to present a new schoolmaster to the school at Overkeith. In most parishes the offices of schoolmaster, session clerk and precentor were combined. Because, claimed Humbie, his grandfather, Sir Adam Hepburn, had mortified the sum of one thousand merks to support these positions, he wished to appoint one Alexander Cuming to them. The session noted that they would have to inquire into Cuming's suitability as a schoolmaster, but that they 'look on it as their undoubted privilege to choose their own Clerk, as it is the privilege of

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<sup>35</sup> NRS CH2/389/2, 7 December 1729.

<sup>36</sup> NRS CH2/389/2, 4 June 1732.

other courts, And that the Office of precentor belongs to the Minister who may depute whom he thinks proper if he does not officiate himself'.<sup>37</sup> As to the mortification 'The Session would be obliged to Humby for a sight of it since it would influence them the more readily to accede to Humby's choice of this or any other fit person for that office'.<sup>38</sup> That marked the start of another line of legal contestation, but the session's selection of James Cuming as their session clerk saw Humbie return with another candidate, Robert Young, and an effort to get the presbytery to overrule the session. The presbytery examined Young in Latin, writing and arithmetic and, having found him satisfactory, resolved to recommend to the session that they appoint him as not only schoolmaster, but also as session clerk and precentor.<sup>39</sup> However, they had not, in this decision, been aware of divisions in the parish. Young incurred their wrath by collecting money for proclamations before his position was confirmed and by claiming that he had the support of the full session.<sup>40</sup> When a letter signed by five heritors complaining about him being schoolmaster and objecting to him becoming session clerk was received, the session went on the attack, delating Young for drinking and cursing.<sup>41</sup> While he was cleared of cursing, the ultimate barrier to his claims was receipt of the information from his previous session that he had been found guilty of fornication.<sup>42</sup> He retreated to his position as schoolmaster, where he continued to niggle the minister. In 1731 the minister was inspecting his school when children threw material at the windows. Young's decision to rebuke but not beat the children was seen as proof of his complicity in their actions: 'The Session told him that it was a fault which showed much of a profane mind and Merited correction by Stripes'.<sup>43</sup> Three years later the presbytery also intervened, recording that 'Mr Young Schoolmaster at Over Keith being called Compeared, he was Sharply Rebuked by the Moderator for Several things Exceptionable in his Conduct & Exhorted to be more Orderly & Circumspect in his after behaviour'.<sup>44</sup> It was during these

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<sup>37</sup> NRS CH2/389/2, 22 February 1730.

<sup>38</sup> *Ibid.*

<sup>39</sup> NRS CH2/185/11, 2 June 1730.

<sup>40</sup> NRS CH2/389/2, 8 June 1730.

<sup>41</sup> NRS CH2/389/2, 26 July 1730.

<sup>42</sup> NRS CH2/389/2, 13 September 1730

<sup>43</sup> NRS CH2/389/2, 10 January 1731.

<sup>44</sup> NRS CH2/185/12 Presbytery of Haddington minutes 1730-1796, 23 July 1734.

years that Humbie used Young to mount a legal attack on the minister and session, as Young confessed subsequently. In 1746, after the death of John Hepburn, Young pleaded for assistance from the session in retrieving payment from James Hepburn. In the process he confessed that he had been 'Directed by [John Hepburn] to raise a process against the session for £40 and furnished with certain papers from his charter chest'.<sup>45</sup> The case went from commissaries to multiple meetings of the Lords of Session before ultimately resulting in a decree in favour of the kirk session. As Young explained

The charges & expenses of this process, which in the end, I saw was groundless, reduced me to great straits & difficulties, & I own I was imposed on & misled in that matter, & am extremely sorry for the great charges your Session was thereby put to, however you having raised & insisted in a Process of exhibition & payment against the said John Hepburn, he was thereby forced to produce your Session Records, & many other writings truly belonging to your Kirk Session, & the Schoolmasters of Upper and Nether Keiths, which have been it seems too, too, long in his own & predecessors Cabinets.<sup>46</sup>

Not only had Young not been paid his full salary by the late John Hepburn, but his son refused to pay anything 'upon pretence I should deliver to him, all or some of the writings above Noticed, Exhibited by his father in your said process before the Lords of Session & he stands not to say, that he will never pay me a shilling, till that is done'.<sup>47</sup> The papers were, however, never in Young's possession but were held by Humbie's legal agent until recovered by the session. The attempt to use Young had therefore failed, but in the process had broken Young and caused the session immense problems, in which they had used some of the money they collected in order to pursue legal action. In January 1734 'the Session Resolves to do what they can for calling up so much of the said rents as will

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<sup>45</sup> NRS CH2/389/3, 11 March 1746.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

support them in obliging Humby to exhibit their records with his grandfather's Mortification of one thousand pounds Scots for the schoolmaster at Overkeith and other pious uses'.<sup>48</sup> This use of the money entrusted to them, although hardly unavoidable in the circumstances, would prove to be a further bone of contention with the heritors.

However, in the same period as John Hepburn was fighting legal action against his son and using a schoolmaster as a proxy antagonist, the laird he was also seeking to besmirch the minister himself. John Cuming, born in 1679 the son of a minister and educated at Glasgow University, was translated to Humbie from Eyemouth in 1715.<sup>49</sup> In 1730 John Hepburn of Humbie, together with the laird of Falahill and three elders, presented a complaint about Cuming to the presbytery outlining 'several crimes & faults which they allege he hath been guilty of in the management of his secular affairs & in his ministerial conduct in the paroch'.<sup>50</sup> There was, says Mitchison, 'a long list of failings both as an individual – not holding family worship, for instance – and as minister – failing to give receipts for money received, failure to visit the dying, absence on Sundays so that the parishioners, deprived of the entertainment of a sermon had recourse to the second best offer, an alehouse, and many other derelictions'.<sup>51</sup> The fact that one of the elders, William Reid, was a forester on Humbie's estate raised some doubt about his objectivity as an elder.<sup>52</sup> In addition, a letter signed by fifty heritors, elders and residents of the parish also cast considerable doubt on the complaint.<sup>53</sup> Accordingly the presbytery rejected the complaint, which was in turn appealed to the synod of Lothian and Tweeddale. When the petitioners were once again rebuffed, they took their concerns about Cuming 'as guilty of-several Crimes, some of them of a very atrocious Nature' to the General Assembly of 1731.<sup>54</sup> It is difficult to ascertain what these crimes precisely consisted of, but a printed memorial for Humbie and his co-complainants seemed to turn on the purchase by Cuming of his

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<sup>48</sup> NRS CH2/389/2, 18 January 1734.

<sup>49</sup> Hew Scott (ed.), *Fasti Ecclesiae Scoticae, Vol 1, Synod of Lothian and Tweeddale*, 376.

<sup>50</sup> NRS CH2/185/11, 9 June 1730.

<sup>51</sup> Mitchison, *Poor Law*, 60.

<sup>52</sup> NRS CH2/389/2, 29 March 1730.

<sup>53</sup> NRS CH2/185/11, 9 June 1730.

<sup>54</sup> NLS, Memorial for the heritors, elders, and others, in the parish of Humby, 1731.

family estate of Threeburnford from Falahill. During purchase negotiations, it appears that Cuming underplayed how much the rental of the property was, with the view, presumably, of reducing the purchase price. This was evidence, claimed the petition, of Cuming being a liar. The Assembly upheld the synod's decision but set up a committee to hear witnesses. That Humbie did not attend to hear the verdict and when asked to attend to see if he desired further examination of witnesses 'declined to tell whither he would come or not' suggests that his complaint was more of a tactic to put pressure on the minister than a genuine complaint.<sup>55</sup> Having reviewed the depositions of thirty nine witnesses and a variety of documents, the committee 'found not only that there was nothing proven against Mr Cuming to infer a censure but likewise they found diverse clear Documents of the honesty of his dealings in his accounts with others, & also that he had been diligent in his ministerial work'.<sup>56</sup> Humbie once again declined an invitation to call further witnesses but Cuming said that he had no desire for the Assembly to pursue censures against Humbie and that he would not be pursuing civil action. The presbytery, however, resolved 'the consideration of some things they observe somewhat extraordinary in the conduct of three of the Elders of the Session of Humbie who were pursuers of the Lybell against Mr Cuming'.<sup>57</sup> That examination never appears to have happened, perhaps overtaken by the continuing disputes over both the money Humbie owed and the processes to recover documentation.

#### A CHANGE OF TACK: HUMBIE AND HIS FELLOW HERITORS ATTACK

In 1735 Charles Dod, the treasurer, reported to the session that he had seen one of Humbie's creditors and that he (the creditor) had received the money owing to him.<sup>58</sup> For the session the concern now was that a debt due to them was now held in the name of Lady Humbie, who seems to have been appointed as factrix on the estate.<sup>59</sup> Six years later the session was informed that five

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<sup>55</sup> NRS CH2/185/12, 1 June 1731.

<sup>56</sup> *Ibid.*

<sup>57</sup> NRS CH2/185/12, 6 July 1731.

<sup>58</sup> NRS CH2/389/3, 28 September 1735.

<sup>59</sup> NRS CH2/389/3, 27 March 1743.

years interest was owing on Lady Humbie's debt, but Humbie assured them that it would have been paid off had not his son-in-law presented a demand for money.<sup>60</sup> Two years later the accumulated debt had reached seven years but Humbie asserted that 'they have promised in a most positive manner it shall be the first debt they will clear, having at last term of Martinmas cleared 4000 merks and that they have no debt now that so considerable or which they have so much at heart to pay off'.<sup>61</sup> Understandably concerned about this delay, the session once again considered their legal options for recovery of the money owed to them. Humbie died in 1743 and a change of tack came with the closer involvement of his son, James. This involvement took two forms. One was that he seemed to have built a coalition with some of the other heritors. The second was that he did not seem to be concerned with the content of the decisions that were taken, more with the status of being involved. In March 1743 he requested that a meeting of the heritors with the session be held to discuss the management of the poor money. The minister then went to consult with his father, John Hepburn, who was still at this stage the responsible and leading heritor. At a meeting with Humbie and his wife the minister used the session register to explain what had been done, all of which they appeared to approve. However, while the minister 'begged the favour of Mr Hepburn younger of Humby who was there at the time to come and see and hear what was in the said Register but that Mr Hepburn refused to do it'.<sup>62</sup> Humbie agreed to call a meeting which the minister would announce from the pulpit. James Hepburn promptly insinuated that the minister had not informed the session about the planned meeting, a charge which the session unanimously rejected.<sup>63</sup> Once again, the younger Humbie appeared to have been doing his best to paint the minister in the worst possible light.

The meeting reviewed the capital stock of the session. They also took into account the decisions of the session to pay for repairs to schoolhouses out of the poor fund. Properly speaking,

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<sup>60</sup> NRS CH2/389/3, 13 February 1741.

<sup>61</sup> NRS CH2/389/3, 23 February 1743.

<sup>62</sup> NRS CH2/389/3, 27 March 1743.

<sup>63</sup> NRS CH2/389/3, 27 March 1743.



such repairs were the responsibility of the heritors, but the meeting decided that the payments should be retrospectively approved to avoid disputes between heritors of various parts, an interesting comment on the divided nature of the parish. The meeting also resolved that it was 'of opinion that in time coming no money ought to be lent out, nor principal sums uplifted without Acquainting the residing Heritors in the parish or at least the majority of them'.<sup>64</sup> The consequences and the alliance that the new Laird of Humbie had constructed came to pass in the following year. In November 1744 the session received a letter from James Hepburn of Humbie, Alexander Ker of Keith and Thomas Anderson of Whitburgh demanding that money held on bond by the Edinburgh advocate James Smollett be paid immediately under threat of legal action as they claimed it was not well secured.<sup>65</sup> The three heritors were not in church to hear Smollett's response, which was that he had already offered to repay the money in the previous year and, clearly offended by the implications of the demand, promptly repaid the sum owing. In the opinion of another heritor and elder, Andrew Broomfield of Durkrahill, this was a poor outcome 'in Respect Mr Smollet is a Gentleman having much lying money on bonds beside his Estate and that money being now lifted Lyes dead to the prejudice of the poor, no sufficient hand being yet got to put it in'.<sup>66</sup> Following this turn of events, Humbie again caused problems for the session by doubting the conduct of the session's legal agent, Mr Edmondson. It was reported to the session in February 1745 that Edmondson, who not only acted for the session in legal cases but also found potential recipients of the session's funds, had 'heard there had been some bustle about his accompt by one of the heritors viz Humby & that therefore he would not Discharge the said Accompt but should make it appear by the opinion of the best writers in Edinburgh that he had been modest in his charge upon the Kirk Session, and therefore would remove the above Aspersion before he discharged the said Accompt'.<sup>67</sup> At the same time, as noted above, the schoolmaster Robert Young had sought the session's

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<sup>64</sup> NRS CH2/389/3, 21 April 1743.

<sup>65</sup> NRS CH2/389/3, 25 November 1744.

<sup>66</sup> NRS CH2/389/3, 2 December 1744; 20 January 1745.

<sup>67</sup> NRS CH2/389/3, 3 February 1745.

assistance in obtaining the payments due to him under the terms of the mortification that Humbie claimed gave him the right to present to the school but which the laird had never produced.

William Thomson reported that he had gone as directed in company with the petitioner to the house of Humby, and there saw him deliver a full copy of his petition to the Kirk Session unto Humby's hand which he refused to read, but put it in his pocket, telling them, he had heard the contents of that petition, and would afterwards give it such an answer as it deserved, whereupon William Thomson wanted to know, why he would not pay the schoolmaster what seemed to be so clearly due & payable out of the Estate, to which he Answered that he had paid part, but would pay no more til he got the writes, which was lying in process before the Lords and which he reckoned did rightfully belong to him.<sup>68</sup>

In frustration, the session instructed Edmondson to start legal process to enforce the terms of the mortification. The case was to drag on for a number of years. In 1746 it was under consideration at the Court of Session, but two years later there was no progress to report.<sup>69</sup> In 1749 the Lord Ordinary had given sentence in favour of the session, but the heritors had given in a reclaiming bill, challenging the decision.<sup>70</sup> By 1750 the session having received legal advice declared their resolve to continue with legal action. They recorded that 'two lawyers had given their signed opinion, in order to prosecute the Mortification, which was afterward read by Humby and Leiston & also was read to Whitburgh. As to all which Humby took a protestation in terms of what he & some other Heritors had done in the year 1745 but the other Heritors present did not join him in the said protestation, nor did he give in a Copy of it'.<sup>71</sup> In the following year they could report no further progress as the presbytery were now involved. During this time, the process became entangled with the separate legal process that the heritors had started about their involvement in the management of the poor

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<sup>68</sup> NRS CH2/389/3, 24 March 1745.

<sup>69</sup> NRS CH2/389/3, 29 January 1746; 12 February 1748.

<sup>70</sup> NRS CH2/389/3, 19 November 1749.

<sup>71</sup> NRS CH2/389/4 Humbie kirk session minutes (1750-1780, 1790-1), 19 June 1750.

money, to be recounted further below. Accordingly, to anticipate some of that discussion, in 1752 the minutes of the annual meeting to consider the state of the funds record

As to the process relating to the Lord Humby's Mortification, it's to be observed, that since the foresaid Annual meeting, the heritors having got by a sentence of the Lords of Session a Conjoint power with the Kirk Session in matters relative to the Poor's Funds, and the said Heritors not having as yet agreed with the Kirk Session for carrying on that process, the Consideration thereof is delayed, till it be laid before the Heritors again, the kirk Session continue still in the same mind as formerly.<sup>72</sup>

What the eventual outcome was is unclear, as the matter disappears from the minutes. That was because, in the meantime, the new alliance of heritors had gone on the attack.

In January 1747 five heritors, with James Hepburn at their head, signed a letter directed at the session, complaining that the session had money lying idle which could be earning interest. They suggested that they could direct the session to a creditworthy banker who would give four percent on the money. They also demanded that if the session had any sum above ten pounds sterling that they should lend it on reasonable security. The session laid this letter before the presbytery and replied that the money concerned had already been lent out in just the manner that had been suggested. However, what might have provoked the heritors was the assertion after this that

I hope you will pardon us if we express some surprise that you should in an Authoritative way require us to do such & such things in the management of the Poor's Money, when you cannot be ignorant that we are entitled by Law to the sole Administration & management of the said Funds. However to convince you of our Sincere Intention to Cultivate a good

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<sup>72</sup> NRS CH2/389/4, 10 February 1752.

understanding with you, we shall be very willing in all cases Relating to these funds which we may judge to be of importance & difficulty to take your friendly advice & assistance.<sup>73</sup>

The presbytery was now involved and undertook a thorough review of the accounting records of the Humbie session. Their conclusion was that

And notwithstanding the complaints offered by Several of the Heritors of that Parish to the Presbytery, the Committee after the Strictest scrutiny find that the Session is not chargeable with Fraud in the Management of the Money belonging to the Poor, however inaccurately their Books have been keep'd. But that the like may be prevented for the Future, the Committee are of Opinion that the Presbytery should earnestly recommend it to the Session to keep their accounts with greater exactness; & considering the unhappy jealousies that have arisen in Several of the Heritors of that Parish about the Session's Conduct as to the Poor's Funds, that it will be more for the honour of the Session & the Satisfaction of all concern'd, that for the time coming the Management of the Poor's Money should be wholly under the direction of the Presbytery, excepting only the giving of Stated or Occasional Supply to the Poor & the payment of the Usual annual Salaries.<sup>74</sup>

The involvement of the presbytery seemed to raise the stakes, for they also pointed to the decision to pay for repairs to schoolhouses from funds for poor relief. This was completely inappropriate, they decided, and steps might be taken to recover the sums from the heritors. The heritors present – Humbie, Leaston and Keith – immediately demanded an extract of the minutes because of their objection to these conclusions. The threat to their finances might have been behind their decision to start legal process as recorded by the presbytery in 1749: 'a Process was now commenc'd before the Court of Session by five Heritors in that Parish about the Right of administration in these affairs, in which these Gentlemen claim'd an equal Share with the Kirk Session & even a Negative upon them;

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<sup>73</sup> NRS CH2/389/3, 12 April 1747.

<sup>74</sup> NRS CH2/185/12, 6 September 1747.

& that the Committee had writ to an agent in Name of the Session & employ an Advocate to Defend their Right'.<sup>75</sup> There is a telling phrase in the introduction to the information presented in the pursuit of the case: the poor fund of Humbie had been, the heritors claimed, 'absolutely under the management of the minister of the Parish, clothing his Acts and Deeds with the specious Name of the Kirk-session'. The size of the funds under management, they claimed, with no shred of evidence, 'is a tempting Object to a Man of Ambition, who loves to exercise Power, or to oblige his Friends'.<sup>76</sup> Once again the personal animus against the minister is to the fore, leading to extravagant claims which seem to have had no basis in practice, at least as far as scrutiny of kirk and presbytery records indicate. What is noticeable about the progress of the cause, as recorded in presbytery and session minutes, is that, despite a certain hardening of attitudes, both church bodies continued to offer the heritors what they were demanding, but such compromises were rejected, with the heritors pressing for maximum victory. In 1750, for example, the presbytery adopted an overture proposed by Kerr of Keith as follows:

That the Presbytery shall enjoin the Kirk Session of Humby, that when any Money is to be uplifted, or Lent out, or any Process raised, that previous to the doing of any of these things, or any other thing relating to the administration of the Poor's Money except the Supplying the Necessities of the Poor & paying the Ordinary Salaries belonging to the Kirk Session & Parish, there shall be a meeting of the Heritors call'd by a Publick Intimation from the Church & Letters wrote particularly to every one of them, that the affair may be laid before a Conjunct Meeting of the said Heritors & the Kirk Session; & if at the said Meeting the Heritors & Kirk Session should disagree in their Opinion about the uplifting of Lending out of their Money, or raising any Process, then in that Case, the Kirk Session shall be discharged

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<sup>75</sup> NRS CH2/185/12, 7 March 1749.

<sup>76</sup> McMaster University, Canada, William Ready Division of Archives and Research Collections, Information for Hepburn of Humbie, Congalton of that Ilk, Henderson of Leiston, and other Heritors of the Parish of Humbie, pursuers; against the minister and Kirk-session of that Parish, defenders, 1 February 1751. I am grateful to members of staff at McMaster for their prompt and helpful response to my request for access to this document.

from doing any of these things, till the Heritors bring the Affair before the Presbytery, or before a Committee of Presbytery to be Nam'd by the Heritors, whose Nomination the Presbytery shall approve of & appoint accordingly: Who are finally to decide the Matter, & in whose Decision the said Parties are to Acquiesce. And the Committee propose this from themselves as a Reasonable Overture for adjusting all differences in an amicable way.<sup>77</sup>

Despite this the process continued, with the presbytery being resolved 'to Support the Rights of the Kirk Session & the Antient Customes of this Country anent the management of the Poor's Fund, so far as they can in a Legal way'.<sup>78</sup> Despite this resolve, they were prepared to give the heritors access to the session records. Cuming, under instruction from the presbytery, was prepared to release a five year book of accounts, but insisted that the other records of the church be inspected 'either at his house or any of their own houses, where they might have Copies, or Extracts, what they pleased, he or the Session Clerk waiting on them for that purpose, but that he was not Authorized by the Presbytery to part with said books otherways out of his custody, and therefore he will not comply further with their Demands'.<sup>79</sup> This followed the result of the court case, recorded by the presbytery in March 1751, that gave the heritors joint administration of church finances. Meanwhile, the affair of Lady Humbie's bond had dragged on. At one of the first joint meetings in April 1751, attended by Keith, Leaston and Whitburgh, but not Humbie, it was resolved to accept an offer of a bond supported by cautioners from Lady Humbie, backed up by a threat of further legal action.<sup>80</sup> A process of horning was duly taken up in order to recover what was now fourteen years of accumulated interest. Lady Humbie sought to have this suspended but in December 1751 the session's agent obtained yet another decret against the cautioners; the money was finally obtained in February 1752.<sup>81</sup>

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<sup>77</sup> NRS CH2/389/4, 5 June 1750.

<sup>78</sup> NRS CH2/185/12, 5 February 1751.

<sup>79</sup> NRS CH2/389/4, 4 April 1751.

<sup>80</sup> NRS CH2/389/4, 26 April 1751.

<sup>81</sup> NRS CH2/389/4, 16 June 1751; 10 February 1752; 17 February 1752.

In the meantime, it is not clear how much involvement Humbie had in the affairs of the session that he had insisted on for so long. He did not attend any of the five joint meetings of the session and heritors in 1752 and 1753. There is a gap in the session records, but the first meeting Humbie is recorded as attending was in April 1755.<sup>82</sup> By this time the minister James Cuming had died and his replacement, Robert Dundas, attended the meeting chaired by James Hepburn. In the intervening period, however, the heritors had not let up in their attacks on the minister and session. In 1752 Cuming reported to the presbytery

that he understood a Process was design'd to be brought before the Sherriff in this Place, against their kirk Session, for the Expenses laid out in the Process carried on Lately before the Lords about the management of the Poor's Funds in that Parish; the Presbytery taking this to consideration appointed Messrs Dickson, Wilkie, Stedman & Hamilton as a Committee to take Notice of that affair, & if needful to appear in defence of the Kirk Session & the Orders given them by the Presbytery.<sup>83</sup>

What the outcome was is not clear; perhaps the attacks disappeared with the passing of Cuming and his replacement by a candidate proposed by Archibald Christie of Keith.

## CONCLUSION

The evidence presented both supplements and extends the account supplied by Mitchison. As she pointed out, the decision reached by the Court of Session in 1751 has to be seen in the context of a thirty-year dispute between the kirk session and its principal heritor. The session felt obliged to engage in legal action on four occasions to force Humbie to live up to his duties. A process to recover debts he owed the church rumbled on for six years before it morphed into a second process against his wife. It was not until 1752 that the session finally recovered money owing to it from 1719.

Meanwhile a separate action was needed to recover documents that Humbie had appropriated. The

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<sup>82</sup> NRS CH2/389/4, 14 April 1755.

<sup>83</sup> NRS CH2/185/12, 7 July 1752.

success of this action led in turn to a further action to enforce the terms revealed by these documents. It is only through the survival of documents external to the church that we are able to trace these dynamics. While kirk session records are often comprehensive and illuminating, they cannot by their nature tell the full story. The value of local case studies is that they can, given the constraints of record survival, illuminate the complex inter-relations that lay at the heart of the administration of poor relief. At Humble, these inter-related processes are further illuminated by the parallel legal disputes between father and son. The ferocity of the disputes between the older and younger Humble show not only the willingness of both to use the law, but also a degree of vindictiveness, manipulation and untrustworthiness on the part of both. These character traits help to explain why legal action dragged on so long and why what appear to have been reasonable compromises were rejected. Other sessions and heritors managed to make their joint responsibilities for the poor work.

On top of the personal animus between principal heritor and minister may have been wider shifts in the relationship between church and landowners. A difference between father and son was that while the elder Humble had fought alone (except for dragging some dependent elders behind him) the son managed to construct an alliance with some other heritors. What seemed to cement their alliance was the realization, thanks to the agitation that Humble had raised, that heritors might be liable for money that had been spent on improving the parish schools out of the poor fund. One sees this attempt to shift financial responsibility for heritors' duties in other cases, such as the long running dispute at Monymusk, Aberdeenshire.<sup>84</sup> There are also parallels in Cambuslang and Monymusk with the status of and access to session records. It was here that the kirk stood its ground, worried that access to financial details in their registers would compromise the details of church discipline contained within them. In addition, they feared, with good reason if the experience

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<sup>84</sup> Alistair Mutch, 'Presbyterian governance in practice: Monymusk 1790-1825', *Records of the Scottish Church History Society*, 42, 2013, 1-34.



at Humbie is anything to go by, that their records might disappear into the charter chests of unscrupulous heritors.

Kirk session records were central to the practical operation of Presbyterian church discipline. They provided the means by which a church which lacked a formal hierarchy of individual authority roles could ensure that policies were being implemented. After attempts to maintain a regular round of Presbyterial visitations fizzled out around mid-century, the calling in of session registers for review became a crucial part of church discipline.<sup>85</sup> The scrutiny of financial records was seen as an integral part of such reviews but one way of avoiding conflation of church and financial discipline was to maintain separate books of account. The emergence of such a separate book was one response at Humbie but there are two notes of caution about seeing the Humbie case as a watershed. One was that the process of moving financial transactions out of the body of the register, first to the margins, then to the back of the register and finally to a separate account book, was one which was underway, especially in the parishes around Edinburgh, from the late seventeenth century. The second was that the progress of this tendency was distinctly uneven, with parishes in Aberdeenshire maintaining integrated registers until the end of the eighteenth century.

The particular local context of the Humbie decision may explain why, although a contemplated challenge to it by the national church never came to pass, it was widely ignored. This was not just a matter of legal doubts about the soundness of the decision. It also owed much to the particular character of the Humbie heritors and the danger that challenging kirk sessions too much in their administration of poor relief might not only involve the heritors in the tricky decisions that had to be taken in balancing demands for support with stretched incomes but also surface actions, such as the support of parish education by sessions, that might rebound on heritors in the form of extra expenditure on their part. In addition, the applicability of the decision was limited by the arguments it contained about the liability of heritors to assessment for support of the poor. When

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<sup>85</sup> Mutch, *Religion and National Identity*, 56-72.

the precedent of Humbie was raised in a dispute at Monymusk, it was countered on the grounds that assessments for poor relief were not operated in Aberdeenshire and so, if the case had any force, it was confined to parishes where assessment was practiced. However, the case indicates a willingness of heritors to challenge the authority of the kirk. Together with on-going disputes over patronage, this might have been a contributory factor to the long simmering resentments about encroachments on church authority that were to lead to the Disruption of 1843.