right of property in No. 2A Claremont Place? The title of that subject stands thus. There is conveyed to him—"All and whole that shop and dwelling-house in the area of No. 2 Claremont Place, with a baker's oven behind the said subjects, and the *solum* of the ground on which the oven is erected, with a cellar in the front area, being the eastmost cellar therein and immediately west to the stair leading into the area, and a right of access to the roof of the tenement for cleaning vents, etc., together also with a right in common with the proprietors of the main-door house No. 2 Claremont Place, and the proprietors of the adjoining tenements to the east to the back-green behind the same, and to the *solum* of the piece of ground on which the said shop and dwelling-house are built, in common with the proprietors of the subjects above the same . . . together with the pertinents of the said subjects." Now, it is plain enough from that description that the *solum* of the area is not conveyed to him *per expressum*, but it is said to be implied from the description. I do not think that we can imply any such right of property, and I do not think that any of the cases referred to support such a contention. There is here a definite description of the subjects conveyed, and these consist only of the shop with the *solum* on which it stands, and do not include the *solum* of the area. There is also conveyed a cellar in the area, but there are cellars belonging to other persons in that area, which I think makes it plain that the petitioner is not entitled to claim a right of property in the area itself.

If we next take the titles of Nos. 4 and 6A Claremont Place, we find that with a similar description there is conveyed the shop with the bakehouse, &c. The description is practically the same, and there are other clauses in the deed relating to the petitioner's liability for the expense of upholding the pavement, &c., all of which satisfy my mind that the petitioner has no right of property in the *solum* of this area also.

I think it is quite plain that the application is not well founded, because the petitioner admits that he is not entitled to build over the areas unless they belong to him. No right less than a right of property could sustain such a claim. That would therefore in my view prevent the appellant succeeding so far as relates to Nos. 2A, 4, and 6A Claremont Place.

The other property is in a different position. It is plain that in this instance the petitioner is the proprietor of the cellars and also of the area, and it may well be that he is entitled to bring forward his house to the street so far as regards this part of the subjects, although he is not entitled to do so as regards the other parts. The respondents object to the proposed alterations on the ground that they would be in contravention of the titles on which he holds his property. Referring therefore to the petitioner's title we find this clause—"And it is hereby specially provided and declared that the said James Sutherland shall be bound and obliged against the term of Whitsunday 1826 to complete the houses to be erected on the said area, and that the same shall be in conformity in all respects to the plan and elevation adopted for the said area made out by the said Adam Ogilvy Turnbull, approved by us and signed as relative hereto, strict conformity to which plan and elevation it is hereby agreed may be enforced as the buildings proceed by application when necessary to the judge ordinary of the bounds;" while these conditions are inserted in this and subsequent titles—"And moreover, it is hereby expressly provided and declared that it shall not be competent to, nor in the power of the said James Sutherland or his foresaids to make any deviation from or alteration of the plan and elevation above mentioned of the said tenement to be erected on the area hereby disponed, nor to erect any buildings on the back f. . . all which it is hereby specially provided may be stopped, demolished, or removed by us or our foresaids, or by any of the feuars of the said street at the expense of the feuars offending." This right to stop the erection of any building is given to the other feuars, and there are the same restrictions and obligations in their titles. That being so, there is no doubt that the conditions may be enforced against the petitioner if he proposes to violate them—and it is said that he proposes to violate them—inasmuch as the proposed buildings would not be in conformity with the plan referred to. The petitioner, however, says in answer—"You cannot tell if I am violating that plan, because no such plan exists, and if you wish to enforce it against me you must produce it." I cannot think that that is a sound argument. The house has existed for a long time, and presumably it was built according to the titles on which the property was held. I think that the petitioner must show that his proposed work is in conformity with the titles, and consequently that he, and not the respondents, must produce the plan. I think, therefore, that the judgment of the Dean of Guild is well-founded, and that we should dismiss the appeal and affirm the judgment.

LORD YOUNG and the LORD JUSTICE-CLERK concurred.

LORD CRAIGHILL was absent on circuit at the hearing.

The Court dismissed the appeal and affirmed the judgment of the Dean of Guild.

Counsel for the Appellant—Rhind—Baxter. Agent—Robert Menzies, S.S.C.

Counsel for the Respondents—Shaw—Dickson. Agents—Cairns, M'Intosh, & Morton, W.S., and Thomas Hunter, L.A.

Friday, November 18.

FIRST DIVISION.

[Sheriff-Substitute at Elgin.

STEPHEN *v.* ANDERSON.

Church—Seat in Parish Church—Allocation—Part and Pertinent—Inseparable from Property.

The sittings in the parish church of a parish partly burghal and partly landward, were allocated as if the parish had been entirely landward, and upon the principle that every proprietor within the parish had a portion

of the area allocated to him separately. *Held* that the sittings became inseparable parts and pertinents of the estate in respect of which they were allocated.

This action was raised in the Sheriff Court at Elgin by John Stephen Stephen, Bachelor of Medicine, residing in Edinburgh, against Robert Anderson, grocer, Elgin, to have the defender interdicted from using a seat or pew in the parish church of Elgin.

The title under which the pursuer alleged right to the pew in question was a disposition and assignation dated 27th August 1875, by which Mrs Jane Sutherland or Anderson, residing at Eden Cottage, Elgin, widow of Lewis Anderson, merchant in Elgin, in consideration of the sum of £15, conveyed to Miss Anne Stephen (proprietrix of, and residing at, Friar's House, Elgin), and her heirs and assignees, all her right and interest in pew No. 22 of the Elgin Parish Church, as well as the pew itself, so far as she had right thereto. Miss Stephen died in 1885, and the pursuer was her heir-at-law.

The defender averred that "the late Lewis Anderson, merchant in Elgin, in 1819 became proprietor of the properties in High Street of Elgin, as particularly described in the disposition in favour of the defender after mentioned. On the parish church of Elgin being rebuilt about the year 1828, the said Lewis Anderson was assessed in a portion of the cost of erection of said church effeiring to the then rental or value of said property. On the sittings in said church being allocated among the heritors in 1828 the pew No. 22 in the area thereof, being the pew or sitting in regard to which the present action has been raised, was, in respect of said property, allocated to the said Lewis Anderson, and became a pertinent thereof. The said property continues liable to be assessed for the maintenance and repair of said church. By disposition, dated the 8th and recorded in the Particular Register of Sasines for the burgh of Elgin the 23rd, both days of November 1876, granted by Mrs Jane Sutherland or Anderson, widow and disponee of the late Lewis Anderson, the defender acquired right as at the term of Martinmas 1876 to the said property and pertinents thereof, including the said pew or sitting in said parish church, and he is still the proprietor thereof." The manner in which the allocation of the sittings in the church was effected in 1828 is explained in the opinion of the Lord President, *infra*.

The defender pleaded—"(2) The pursuer's author not being an heritor liable to be assessed in the maintenance of said church, her alleged right to the seat in question was incapable of descending by inheritance. (4) The pretended disposition and assignation founded on by the pursuer, being illegal and inept, can convey to the pursuer no right to the sitting in question, in respect that the right to same forms a pertinent of the defender's property, and cannot be separated therefrom."

By interlocutor dated 27th May 1887 the Sheriff-Substitute (RAMPINI) found that in respect of the infeftment following on the disposition in favour of the defender he had acquired a heritable right to the pew, and was entitled to occupy and possess the same in preference to the pursuer, and therefore dismissed the petition.

"*Note.*—The facts, so far as these are necessary to be stated, are as follows:—By disposition and assignation dated 27th August 1875 the late Mrs Jane Sutherland or Anderson conveyed to Miss Anne Stephen and her heirs and assignees all her right and interest in pew No. 22 of the Elgin Parish Church, as well as the pew itself, so far as she had right thereto; and by disposition, dated the 8th and recorded the 23rd November 1876, she conveyed to Robert Anderson, the defender, certain property situated in the High Street of Elgin. This property is within the royalty of the burgh, it is held in free burgage, and the disposition contains a clause of parts and pertinents.

"The parish of Elgin consists of the Royal Burgh, with a large landward district attached (*Magistrates of Elgin* v. *Gatherer*, Nov. 17, 1841, 4 D. 25), and the seat in question was allocated to the property now belonging to the defender at the division of the area of the church in 1828.

"The questions on which the decision of the Court is asked are—(1) Whether the right to a seat in a burghal parish church, or, what is the same thing, in the portion of the area allocated to the burgh, is heritable or moveable? (2) If the former, whether it can be validly separated from the lands to which it is attached? and (3) Whether the pursuer or the defender is entitled to the seat in question?

"(1) The first question appears to be settled by the case of *Milne*, Jan. 20, 1869, 7 Macph. 406. The parish of Montrose, like that of Elgin, is partly burghal and partly landward, and in that case, where the question was between heir and executor, a seat in the parish church was held to be heritable. A similar principle was given effect to as regarded a pew in a dissenting chapel in the case of *Telfer*, June 1810, Hume, 192.

"(2) A more difficult question is whether such a seat is separable from the property to which it was originally allocated. If the parish was a purely landward one, it seems that it would not be so—Dunlop's Parochial Law, sec. 77, p. 45; Hunter on Landlord and Tenant, ii. 189; Bell's Principles, sec. 744; but the case appears to be different in a burghal parish or in that portion of the area of a parish church partly burghal and partly landward, allotted to the burgh. The cases of *Watson* in 1760, M. 5431, and *M'Intosh* in 1825, 3 Shaw, 508, and the cases cited by Duncan (Parochial Ecclesiastical Law) pp. 211-213, seem to establish the principle, which proceeds on an entirely intelligible ground—viz., the nature of the pursuits and character of a burghal population—that such seats are not *extra commercium;* and accordingly we find numerous cases in which seats have not only been let but sold, at least to persons who, like Miss Anne Stephen, were residents within burgh and parishioners. These cases, the Sheriff-Substitute thinks, establish without a doubt the separability of the heritable right to a church seat from the lands to which it is attached in circumstances like the present.

"(3) But the practical question remains—Who is entitled to succeed in the present competition? And in this connection it appears to the Sheriff-Substitute that the principal point to be considered is the form of conveyance employed by

the late Mrs Anderson to separate the seat from the lands. That conveyance is a disposition and assignation—a mode commonly employed to convey a personal title to lands—and the Sheriff-Substitute cannot doubt but that it was a competent instrument to transmit the right in question. But so long ago as 1737 it was settled in the case of *Bell*, M. 2848, that such a conveyance could not compete with a second conveyance duly completed by infeftment, and that, the Sheriff-Substitute thinks, is the case here."

The pursuer appealed, and argued—This was a landward-burghal parish, and in such parishes the sittings allocated to the burgh were not inseparable from the lands. The burgh was treated as one heritor, and the area given off to the magistrates was capable of sub-division. The pursuer's author would have been liable to be assessed for maintenance. Even if here the allocation had been to individuals, it was to these individuals as inhabitants of the burgh, not as owners of property. The contention of the defender was both inconvenient and unjust. It was inconvenient, because it involved that whatever change might take place in the character of the building to which the seat was originally allocated, as for instance, its change from a dwelling-house into a shop, yet the proprietors of the sitting could not dispose of it apart from the property; and it was also unjust, because the proprietor, though not requiring to use his seat, was yet liable to be assessed for the up-keep and repairs of the church, and that upon the real rent of his property. The assessment now-a-days was always on the real rent. As to the case cited by the defender they were of no avail in the present case as they all proceeded upon the old valued rent, and when the allocation proceeded upon real rent they did not apply—*Farie* v. *Leech*, February 2, 1813, F.C.; *Duff*, M. 9644; Ersk. ii., 6, 11, Duncan Paroch. Eccles. Law, 212, sec. 103; *Harlow* v. *Governors of the Merchant Maiden Hospital* (*Peterhead* case), 4 Pat. App. 356; *Lockhart* v. *Lockhart*, January 1832, 10 Sh. 243; *Magistrates of Elgin* v. *Gatherer*, November 17, 1841, 4 D. 25; *Downie* v. *M'Lean*, October 26, 1883, 11 R. 47; *Trades-House of Glasgow* v. *Heritors of Govan Parish*, July 8, 1887, 14 R. 910.

Replied for the respondent—The seat in question was a pertinent of the respondent's property, and was inalienable from it. The mode of assessment and allocation in the present case had been exceptional, and matters must remain in *statu quo* until the church was rebuilt. The parish had been treated as a purely landward one, and the seats in the church were therefore inseparable pertinents of the properties to which they were allocated—*Heritors of Campbelltown*, M. 7921; *Heritors of Crieff*, M. 7924; *Heritors of Forfar*, M. 7929; *Heritors of Kinghorn*, M. 7918; *Heritors of Kirkcaldy*, M. 5121; *Abercorn* v. *Presbytery of Edinburgh*, March 17, 1870, 8 Macph. 733; *Lithgow*, 1697, M. 9637; *Duff* v. *Brodie*, 1769, M. 9644; *Peden* v. *Magistrates of Paisley*, M. 9644; *Sinclair* v. *Alexander*, M. *voce* Kirk App. No. 1; *Napier* v. *Patrick*, March 28, 1867, 5 Macph. 683; *Bruce* v. *Bruce*, June 24, 1873, 11 Macph. 755; *Duke of Roxburgh* v. *Millar*, June 1, 1876, 8 R. 728.

At advising—

Lord President—The pursuer claims interdict against the defender using a pew in the parish church of Elgin, and the title on which he does so is a disposition and assignation by which the pew and sittings in it were conveyed by Mrs Anderson in August 1875 to his author, Miss Stephen, whose heir-in-law he is.

The defender, on the other hand, maintains that this and several other sittings in the parish church belong to the proprietor of certain house property in Elgin, which was conveyed to him by the same Mrs Jane Sutherland or Anderson on 23d November 1876, a year afterwards, and upon which conveyance of property he was infeft. He says that the sittings in the parish church attached to this property are conveyed to him by this lady as part and pertinent of the estate—expressly conveyed—and that as such part and pertinent they cannot be separated from the property. I am of opinion that the defender is right in that, and I shall explain my views very shortly.

The area of this parish church was divided in the year 1828, and it was divided on this principle, that every proprietor within the parish had a portion of the area of the church allocated to him separately. The landward part of the parish embraced some properties of very large value, and the proprietors within the limits of the burgh were generally small proprietors, but they were all dealt with in the division of the area exactly on the same footing. The proceedings are before us, and they establish that proposition, I think, very clearly indeed. They begin with a rental of the parish of Elgin, as ascertained in October 1825, and there is a specific value put on every separate subject, not only in the landward part of the parish, but also in the burghal part of the parish, distinguishing, however, between the rents of lands and the rents of houses. The reason of that is brought out very clearly in the note which the assessors appointed for the purpose appended to their valuation roll, if I may so call it. They say that they "submit the preceding state, amounting to £15,377, which, to the best of our judgment, is a fair rental of the parish. The only deduction which we have judged proper to make for the landward part of the parish is the stipend payable to the ministers, and we have considered it our duty to deduct from the rental of the household property of the parish the sum of 5 per cent. as an equivalent for repairs on the said household property." This explains why a distinction is made in the statement of the rental between the houses and lands; but in every other respect the rental is made up in reference to the landward and burghal parts of the parish exactly in the same way; and there the proprietor of the property with which we have to deal here, Mr Lewis Anderson, is entered at an annual value of £109, 5s. Then there followed upon that a minute of meeting of the Presbytery of Elgin, held on the 11th August 1826, at which a procurator appears on the part of the heritors of the parish in the ordinary sense of the term, and also of the feuars of the town, and he stated that a contract had been entered into for the erection of a new church, and he produced to the Presbytery a certified rental of the parish—that which I have just referred to—and the Presbytery "having thereby considered said minute of agreement and rent roll, unanimously approved thereof, and appointed the contract to be entered into in terms of said minute, and to be extended in due

form *quam primum*. The Presbytery also decerned against the whole heritors, feuars, and other proprietors of the town and parish of Elgin for the foresaid sum of £6286 sterling contained in said minute of agreement, and appointed Mr Patrick Duff to apportion the said sum among the several heritors, feuars, and other proprietors, according to their several rents, as stated in the rent roll produced and approved of by the Presbytery." And then there is the usual certification of an application to the Court that it should interpone authority for enforcing the assessment.

Now, this being carried out, it was contended that Mr Lewis Anderson, the then owner of the property which we are dealing with, was assessed for his proportion of the expense of building the new parish church precisely as if he had been a heritor in a landward parish; and all other feuars and proprietors within the parish were dealt with in the same way. In short, the imposition of the assessment was made exactly in the same way as it is in use to be made in a parish which is entirely landward. Then we come to the division of the area, which takes place before the Sheriff-Substitute, and that functionary, at a meeting at which everybody was represented, stated to the gentlemen assembled that in consequence of the petition presented to him by the heritors of that parish and their committee he had, in terms of the prayer of that petition, appointed various intimations to be made preparatory to dividing the area of the new church amongst the persons who had contributed to the building thereof, of which various interlocutors were read by the clerk, and so forth. And the Sheriff-Substitute called on the heritors in the order of their interests to come forward and make choice of their family seats, certifying to such as might not appear that he "will allocate to them seats according to their interests as established by the rentals and calculations now made." Now, upon that there follows a choice of seats by the various heritors, including the proprietors within the burgh, and the leading heritor, apparently Mr Lawson, on the part of the Earl of Fife, made the choice of his sittings, amounting to seventeen in number, and all the other proprietors in like manner proceeded to do so, and Mr Lewis Anderson, the owner of the property here in question, chooses his seat, No 22, in the area of the church. And then, further, the Sheriff-Substitute appointed the heritors to take their choice of the remaining sittings, so that it might be more distinctly seen what seats would remain to be given ultimately to the smaller heritors, and thereupon called upon the heritors in their order to make choice of their seats. That is followed by a great variety of other heritors, and, among others, there is Mr Lewis Anderson, who chose four seats in the gallery. So that Mr Lewis Anderson had allocated to him by the Sheriff seven sittings in the area of the church, No 22, as we have seen, and four sittings in the gallery; and he had contributed, as we have seen, a sum in proportion to the value of his property to the building of the church, Now, as I said before, this whole proceeding is carried out exactly in the same way as if there had been no burghal property in this parish at all—as if the parish had been entirely landward; and I have not heard it contended on the part of the pursuer that that was an unreasonable proceeding. It appears to me to be legal, and it is a perfectly well-known proceeding in places where the parish contains partly a rural and partly a burghal population, and therefore we must take it that this was a lawful proceeding.

Now, what is the effect of that as regards these sittings in the parish church? There is no doubt they became, according to Mr Erskine and all the authorities, parts and pertinents of the estate, in respect of which they have been allocated, and are inseparable—cannot be disjoined—from the estate to which they belong, for the very obvious reason that, if they were sold to a stranger, the consequence would be that the inhabitants of property to which the sittings are attached would be deprived of their right to occupy the seats in the parish church. It does not matter in the least what is the extent of the property. The people who are to sit in the parish church in right of the principal heritor, the Earl of Fife, no doubt are much more numerous than those who will sit in the parish church in right of Mr Lewis Anderson, but the principle is exactly the same. There is no doubt that both large heritors and small heritors hold these sittings not in absolute property, but in trust for themselves and others—in trust for all persons to whom the estate belongs—and therefore it is that the sittings in the parish church cannot be disjoined from the property, for that would be a breach of trust. It therefore appears to me to be very clear that this is an inseparable pertinent of the property to which these sittings were attached in the proceedings of 1828.

No doubt there is another way in which the area of the parish church may be divided in the case of a parish partly landward and partly burghal, and which is also perfectly legal, and that is by treating the magistrates of the burgh as one heritor in the parish, representing the interests of the whole inhabitants of the burgh. Now, where the area is divided in that way it is very obvious that the right or interest acquired by any one inhabitant of the burgh is of a very different kind from that which was established by Mr Lewis Anderson in this case. In that case there is no property—no individual property—within the burgh to which any sittings are attached by the decree of division, and therefore the same rule cannot apply. The only party within the burgh to whom any sittings are given under the decree of division is the corporation, and they having received an adequate share of the area of the parish church must use their own discretion in the way of dividing that—sub-dividing that—amongst the inhabitants of the burgh with reference to particular properties. That has been done on several occasions, and wherever that is done a different rule must undoubtedly be acted upon by the parties in the burgh who occupy seats in the parish church. But that is one legitimate way in which the parish can be dealt with, and the way in which it has been dealt with here is the other way, but it is also perfectly legal, and, when resorted to, it must receive its natural legal effect. It seems to me therefore that the disposition and assignation which the pursuer received from Mrs Jane Anderson was good for nothing, because it had not the effect—if it had any effect at all—of separating this inseparable part and pertinent of the property to which it belonged, and, on the other

hand, that the present defender is the disponee infeft of Mrs Anderson, the widow of the original Lewis Anderson, who had allocated to his property the sittings in this pew, No. 22, as part and pertinent of his estate within the parish of Elgin. The result at which I arrive is that that to which the Sheriff came is right, for he has refused interdict, but the grounds on which he refused it I cannot adopt.

Lord Mure—I am of the same opinion. I think it was made abundantly clear by the principle of the decisions cited to us, who the parties are who are liable to be assessed for the building of a parish church. I need not point out that if this question had been raised in a purely landward parish it is quite settled that the right in church sittings could not be separated from the property to which they had been originally attached, because the pew is a pertinent of the property according to all the authorities. There are no doubt special cases to which your Lordship has referred, such as that of magistrates having power to acquire right for the inhabitants of the burgh, but that case does not arise here. In the present circumstances the division of the parish church has been made on precisely the same principle as if the parish had been a purely landward one. This seat was attached to a property, and to that property it must remain attached. I cannot therefore see any ground in law by which an assignation such as we have here could be made the means of transferring from the defender's predecessor the title to this seat.

Lord Adam—The solution of this question lies in the principle stated by Mr Balfour that the right to the seats in a parish church is a pertinent of the land, and cannot be separated from the land to which the seats have been apportioned. That, I think, is invariably the rule in landward parishes, and I did not understand the Dean of Faculty to dispute the point. In the present case, though the lands lie partly within the burgh, the division of the church area proceeded as if it had been an entirely landward parish. The seats were allocated to each owner of land, and that being in my view a perfectly legal mode of allocation, I think the same result must follow as if this had been an entirely landward parish. I therefore concur in the opinion of your Lordships, and I am authorised by Lord Shand, who is unable to be present, to say that he also takes the same view.

The Court recalled the interlocutor of the Sheriff-Substitute, and refused the petition.

Counsel for the Pursuer—D. F. Mackintosh—Fleming. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Defender—Balfour, Q.C.—H. Johnston. Agents—Philip, Laing, & Traill, S.S C.

Friday, November 18.

FIRST DIVISION.

[Lord Fraser, Ordinary.

ALSTON *v.* MACDOUGALL.

Process—Summons—Commencement of Action—Citation of Defender.

In all cases the commencement of an action is the time at which the defender in the action is cited.

Process — Citation Amendment (Scotland) Act 1882 (45 *and* 46 *Vict. c.* 77), *secs.* 3 *and* 4—*Public Health (Scotland) Act* 1867 (30 *and* 31 *Vict. c.* 101), *sec.* 118.

The Public Health Act 1867 provides by sec. 118 that "every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, proceeding, or operation under this Act, shall be commenced within two months after the cause of action shall have arisen." The Citation Amendment Act 1882, after providing by section 3 for citation by means of posting a registered letter containing the summons and warrant of citation, declares that such posting "shall constitute a legal and valid citation." Sec. 4, sub-sec. 2, provides that in cases of service by registered letter "the *inducia* or period of notice shall be reckoned from twenty-four hours after the time of posting."

The summons in an action, to which the 118th section of the Public Health Act applied, was served by registered letter posted upon the evening of the 3d of March. The cause of action had arisen upon the 3d of January. *Held* that the action had been commenced within two months, as the posting of the registered letter upon 3d March was "a legal and valid citation" of the defender.

This was an action of damages for slander at the instance of Mrs Jane Kitchen or Alston, who had been matron of the Cowglen Fever Hospital, against James Macdougall, a member of the sanitary committee of the Parochial Board of the parish of Eastwood in the county of Renfrew.

The Cowglen Hospital was conducted under the Public Health (Scotland) Act 1867, and as such was under the control and management or superintendence of this Parochial Board and local authority. The slander which the pursuer complained of was alleged to have been uttered by the defender at a meeting of the Parochial Board and local authority of Eastwood on 3d January 1887.

The defender pleaded, *inter alia*—"(2) The present action should be dismissed, in respect that it is excluded by section 118 of the Act 30 and 31 Vict. c. 101."

This section provides that "the local authority and the board shall not be liable in damages for any irregularity committed by their officers in the execution of this Act, or for anything done by themselves in the *bona fide* execution of this Act, and every officer acting in the *bona fide* execution of this Act shall be indemnified by the local authority under which he acts, in respect of all costs, liabilities, and charges to which he may be subjected, and every action or