Of less importance was his ruling that s. 210 does not limit the jurisdiction of Justices in any way, for this was already implicit in the decisions of the High Court in *Adams v. Chas. S. Watson*[9] and *Parisienne Basket Shoes Pty. Ltd. v. Whyte.*[10] It had also been so held in *Shuter's* case which he held to be still of binding authority.

One difficult feature of this decision is Mann C.J.'s treatment of the doctrine of acknowledgment of statute-barred debts. Although *Spencer v. Hemmerde*[11] was cited in argument he apparently treated the new promise to pay to be implied from the part payment as creating a fresh cause of action. That this is the effect of the doctrine was laid down in *Tanner v. Smart*[12] but expressly rejected by Lord Sumner in *Spencer v. Hemmerde.* The view now has legislative authority in England, however, being expressly enacted in the Limitation Act, 1939.[13] It would therefore seem that, despite the previous practice, in suing for a statute-barred debt a creditor should plead the date of his acknowledgment and not the date of the creation of the debt as the date of the cause of action.

It should be noted that the High Court refused leave to appeal from this decision so that it must now be taken to be of the highest authority.

—E. N. BERGERE.

9. (1938) 60 C.L.R. 545.
10. (1937) 59 C.L.R. 366.
11. [1922] 2 A.C. 507.
12. (1827) 6 B. & C. 603.
13. 2 & 3 Geo. VI, c. 21, s. 23 (4).

THE WIDENING RANGE OF CERTIORARI.[1]

R. v. Boycott and others; ex parte Keasley.[2]

It is trite learning nowadays that certiorari will go to quash the decision of any authority, whether ordinarily called a court or not, which has power to determine the legal rights of a citizen and which exceeds its jurisdiction. In the judgments of the Divisional Court in *R. v. Boycott ex parte Keasley* the application of this doctrine reached a fresh high-water mark.

Under the Mental Deficiency Act, 1913 in England, a mentally defective person of school age cannot be sent to an institution without action by three different authorities. On the *local education authority* is cast the duty of ascertaining what children within their area are mentally defective and which of such children are incapable of receiving benefit from instruction in special schools or classes; and of notifying to the *local authority* the names and addresses of such children. The duty of the *local authority* is to decide, through a committee for the care of the mentally defective, whether or not a petition shall be made to a *judicial authority* (county court judge, police magistrate or specially appointed justice), to have such children sent to an institution.

In *R. v. Boycott*, a boy aged eleven had been attending a county council school for about six years. The headmaster informed his father that the boy was to be medically examined, with a view to transfer to a special school or other institution. The father objected, stating that two private

1. The writer gratefully acknowledges the assistance derived in the preparation of this note from discussion with the Honours class in Constitutional Law I.
2. [1939] 2 K.B. 651; [1939] 2 All E.R. 626.

doctors regarded his son as fit for ordinary elementary education. The boy, however, was examined on several occasions by Dr. Boycott, the certifying medical officer of the county council, who finally certified that he was an imbecile, and incapable by reason of mental defect of receiving benefit from instruction even in a special school or class. In accordance with the usual practice this certificate was also signed by Dr. Thomson, the school medical officer, who however had not examined the boy. Dr. Boycott also made a general report, stating that the boy had made no improvement in the six months since he was last examined, and though not educable at a special school he should benefit at an occupational centre. The certificate and the report went to the county education officer, who communicated them to the committee for the care of the mentally defective set up by the local authority (the Hertfordshire County Council), with a request that the committee should consider the advisability of having the boy further examined with a view to his certification and transfer to an occupational centre.

The boy's father thereupon moved for an order of certiorari (to which the local authority, the local education authority, and the two doctors who had signed the certificate were made respondents) to quash the three documents referred to, viz. (i) the certificate signed by Drs. Boycott and Thomson; (ii) the report of Dr. Boycott; (iii) the letter from the local education authority to the committee for the care of the mentally defective.

Without reserving judgment, a Divisional Court consisting of Lord Hewart L.C.J., Humphreys and Singleton JJ. quashed the three documents. It is submitted that the decision is only dubiously in accord with the principles laid down by the Court of Appeal in *R. v. Electricity Commissioners*[3] and that in Australia, especially in view of *R. v. McFarlane*,[4] it should not be regarded as good law.

For the applicant, it was contended that the giving of a medical certificate was a function of a judicial nature; and that the certificate signed by the two doctors in this case was obviously made without jurisdiction, since one of the two signatories had never so much as seen the boy to whom it related, and had therefore given his decision without any evidence at all. The other two documents were attacked as inseparable from the certificate.

This argument succeeded. The respondents contended in vain that no decision had been made, no determination of the boy's rights; that matters were still in the preliminary administrative stage of ascertainment and notification; and that not until there was a decision by the judicial authority would certiorari be appropriate. In this case, the local authority had not decided even to present a petition.

The applicant relied on a case which at first sight does seem to support the view that the giving of a medical certificate is a judicial proceeding for purposes of certiorari—*R. v. P.M.G., ex parte Carmichael*.[5] But in that case the statute made the legal right of a Post Office worker to compensation depend entirely on the medical certificate. The place of the certificate in the administrative process regulated by the Mental

3. [1924] 1 K.B. 171.
4. (1923) 32 C.L.R. 518.
5. [1928] 1 K.B. 291.

Deficiency Act was quite different. The vital question in each case is the extent to which rights are affected by the decision complained of. " The determination of a tribunal must itself, and of its own direct force, instantly impose an obligation upon, or affect the rights of, the parties concerned."[6] With *Carmichael's* case may usefully be contrasted *R. v. McFarlane*, where it was held that the recommendations as to deportation of a Board were not judicial acts, because the Board had no power by determination to impose any obligation on any person or to affect any person's rights. Its function was merely to advise the Minister, who was at liberty to act or refrain from acting as he thought fit. Similarly in *R. v. Boycott* the local authority was not bound to act on the doctor's certificate; still less was the judicial authority.

One other general matter was canvassed in the judgments in *R. v. Boycott* but was not made part of the *ratio decidendi*. In prescribing the duties of the local education authority, the Act provides that in cases of doubt as to whether a child is or is not capable of receiving benefit from instruction in a special school the matter shall be determined by the Board of Education. The father had asked that the matter should be referred to the Board but his request was refused. All three Judges thought the matter should certainly have been referred to the Board. In the view taken by the Court, the local education authority's duty of ascertainment plainly involved a decision of a judicial character. If so, however, it would seem that the jurisdiction of the local education authority must include the power to determine, in any particular case, whether or not a doubt arose. If they were wrong, their decision could no doubt be objected to before the judicial authority. But it is submitted that such an error could not be corrected by certiorari; see, for example, the recent decision in *R. v. Commissioner of Patents, Ex parte Weiss*,[7] noted elsewhere in this issue.

—R. N. EBBELS.

6. (1924) 34 C.L.R., at p. 515 (*per* Isaacs and Rich JJ.)
7. [1939] A.L.R. 101; 61 C.L.R. 240.