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D.H. Overmyer Co. v. Frick Co.

405 U.S. 174 (1972)

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

October Term, 1970

D. H. OVERMYER CO., INC., ET AL., *v.*
FRICK COMPANY

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF LUCAS COUNTY, OHIO

No. 127. Decided March —, 1971

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK joins, dissenting.

Respondent subcontracted to install refrigeration equipment in a cold-storage warehouse of petitioners in Toledo, Ohio. Payment of the purchase price was made partly in cash and partly by promissory note in the amount of $130,977. The note, which called for 21 monthly installments, contained a cognovit, or confession-of-judgment, clause.[1] Petitioners claim that the refrigeration equipment did not operate properly and that other contractors had to be hired to repair it. Petitioners notified respondent of this fact, and refused to complete the payments scheduled by the note. Respondent then initiated this action to obtain a judgment for the balance due on the note. An attorney, wholly unknown to petitioners, appeared "for" petitioners and confessed judgment in favor of respondent for the sum of $62,370 plus interest and costs. No notice or hearing was afforded petitioners prior to judgment. Petitioners subsequently moved for

[1] The cognovit clause was as follows: "The undersigned hereby authorize any attorney designated by the Holder hereof to appear in any court of record in the State of Ohio, and waive this [*sic*] issuance and service of process, and confess a judgment against the undersigned in favor of the Holder of this Note, for the principal of this Note plus interest if the undersigned defaults in any payment of principal and interest . . . ." Historically this was a *cognovit actionem, i. e.,* he has confessed the cause of action. Bouvier's Law Dictionary (8th ed.). See, *e. g.,* 3 Blackstone, Commentaries *397.

Oct 71 Mr Douglas

Mr. Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3rd DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

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No. 128.—October Term, 1970

In re Barbara Burrus et al., Petitioners.	On Writ of Certiorari to the Supreme Court of North Carolina.

[May —, 1971]

Mr. Justice Douglas, dissenting.

Each of these Black students, from 11 to 15 years of age, was charged under one of three criminal statutes: (1) "disorderly conduct" in a public building, G. S. 14–132; (2) "wilful" interruption or disturbance of a public or private school, G. S. 14–273; or (3) obstructing the flow of traffic on a highway or street, G. S. 20–174.1.

Conviction for each of these crimes would subject a person, whether juvenile or adult, to imprisonment in a state institution for periods of from six to 10 years. For a juvenile the term would be computed for the period until he reached the age of 21. Each asked for a jury trial which was denied. The trial judge stated that the hearings were juvenile hearings, not criminal trials. But the issue in each case was whether they had violated a state criminal law. The trial judge found in each case that the juvenile had committed "an act for which an adult may be punished by law" and held in each case that the acts of the juvenile violated one of the criminal statutes cited above. The trial judge thereupon ordered each juvenile to be committed to the state institution for the care of delinquents and then placed each on probation for terms from 12 to 24 months.

We held in *In re Gault*, 387 U. S. 1, 13, that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." As we noted in that case, the Juvenile