

TUCKER v. CENTURY ORCHESTRA CORPORATION.

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4-5776

137 S. W. 2d 746

Opinion delivered February 12, 1940.

1. **BILLS AND NOTES—FRAUD, DURESS.**—Evidence in appellee's action against appellant on an instrument in the form of a note representing the balance due on a contract for the services of appellee showing that appellant not having paid the full contract price, the band ceased playing, and appellant was requested to sign the instrument that it might be exhibited to induce the members of the band to proceed, *held* insufficient to show either fraud or duress in securing the instrument from appellant.
2. **CONTRACTS.**—Appellant's defense that the failure of R. to accompany the band could not be sustained as a fraud on him where he knew when he signed the instrument sued on that R. was not with the band.
3. **CONTRACTS.**—That appellant lost money on the transaction was no defense to an action on the contract to pay for the services, since that was a risk he assumed.

Appeal from Pulaski Circuit Court, Third Division;
J. S. Utley, Judge; affirmed.

Booker & Booker, for appellant.

Jerry H. Glenn and *Leonard L. Scott*, for appellee.

McHANEY, J. Appellee sued appellant upon the following instrument: "April 7, 1938. I hereby agree to

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pay Century Orchestra Corp., the sum of Eighty Dollars Bal Due on Don Redmans engagement April 7, 1938, within 60 Days." Appellant defended on the grounds of lack of consideration, duress and fraudulent misrepresentation. Trial resulted in an instructed verdict against appellant and judgment was entered accordingly.

Appellant contends that there was a question of fact made for the jury and that the court erred in directing a verdict. The facts regarding the whole matter are very meagerly stated in the briefs, but we infer that appellant had engaged Don Redman's band for a performance on April 7, 1938, at a price of \$350, and that Orlando Robinson was to have some connection with the band, just what connection we do not know. It appears that one Frank was manager of the band. Appellant had paid \$250 of the \$350 agreed upon, and the band refused to play until the balance was paid. Appellant says Orlando Robinson was not with the band, and for that reason some of the people to whom he had sold tickets demanded their money back, and he didn't think he should pay the balance. Under these circumstances he says Frank came to him and asked him to sign the above instrument so he could show it to the band, as a settlement, and that it would be returned to him. After the instrument was executed and exhibited, the band went ahead and played.

We see in this no element of fraud, unless it be said to be an attempt to defraud the band. Certainly not a fraud upon appellant. Nor was there any duress shown in getting him to sign. He owed a balance of \$100, and the band refused to play until it was settled. It was settled by compromise for \$80, and that in the form of a note. He knew that Robinson was not with the band and made his settlement. He says he lost money on the deal, but that was a risk he assumed.

Affirmed.