

pany, at its home office, and that the applicant, if he shall not receive his policy within 30 days from date hereof, shall notify the company. . . .”

The promissory note was discounted . . . by the agent, and was paid at maturity by plaintiff.

On 1st June, 1904, and before any acceptance by defendants of the offer of plaintiff which was contained in the application, plaintiff gave notice to defendants of the withdrawal of his application, and requested the return of the money he had paid and the promissory note he had given. . . .

The written application is in form 1, for a policy of \$10,000 insurance on the life of plaintiff upon the 20 payment plan, and, among others, the following statements are contained in it:

“I have paid \$351.90 to the subscribing soliciting agent, and have been furnished with his receipt for the same to make the insurance herein applied for binding from the date of approval by the company’s medical director. . . . It is hereby agreed that all the foregoing statements and answers, and also those I make to the company’s medical examiner, which are hereby made a part of this application, are warranted to be full, complete, and true, and are offered to the company as a consideration for the contract, which shall not take effect until this application, which I agree to complete by submitting to a medical examination, has been accepted by the company at the home office in Indianapolis, Indiana, and the first premium shall have been paid and accepted by the company or an authorized agent during the life and good health of the person herein proposed for insurance.”

The written application and the medical examiner’s report were transmitted by the local agent to the head office of the company, and reached that office on 31st May, 1904; the acceptance of the application by the medical director took place on 6th June, 1904; and the acceptance of the risk by the head office of the company on the next day, when, according to the memorandum stamped on the application, the policy was sent out. . . .

I am unable to see anything in the facts and circumstances of the case that precluded plaintiff, at any time before the acceptance by defendants of the risk which he had offered