

for the continuance shall comply with the provisions of the two following sections.

36. The party applying for a continuance under the preceding section, shall prove by his affidavit, or the affidavit of some other credible person, to be filed in the cause, that the testimony of the absent witness (naming him) is material, competent and proper in such suit; that he believes that the cause cannot be tried with justice to the party without such evidence; that he has used his proper and reasonable endeavors to procure the same, and that he has a reasonable expectation and belief that the same can thereafter be procured in some reasonable time.

37. The court may examine, on oath, a party making the affidavit under the preceding section as it regards the materiality of the testimony, the probability of procuring the attendance of the witness in a reasonable time, and on what information or knowledge he believes the witness will prove what he alleges, and if on such examination the court is satisfied of the truth of the affidavit, and that the testimony is material, a continuance shall be granted unless the adverse party will admit the truth of the facts which it is so alleged the absent witness will prove.

38. Where a new trial is granted, or a commission shall issue for the taking of testimony, or where a judgment shall be set aside for fraud or irregularity, the court may continue the cause so long as they shall deem necessary for a trial of the same on its merits.

39. Where a party to a suit dies, and new parties are made or to be made, the court may continue the case so long as may be deemed necessary for the due administration of justice, not exceeding the end of the fourth court after the death is suggested, unless by consent of parties, or testimony or plats are wanting.

40. Where a party in any action brought to recover lands, or in which the title thereof is involved, shall die, and the proper person to be made a party in the place of the person so dying, shall be an infant, such action shall not be tried during such infancy unless the guardian or next friend of such infant satisfy the court that it will be for the benefit of the infant to have the action tried during his infancy, but the action may be continued until the infant arrives at age.