lish its validity and incompetent evidence to establish the title of plaintiff in and to said property. We cite again the inflexible rule in ejectment (i.e.) "*that a plaintiff must recover upon the strength of his own title.*" There being no legal evidence tendered by the plaintiff in support of her claim to the said lot No. 7 in the lower ward of Buchanan we hold that her right and title therein and thereto has not been established.

The judgment of the lower court should therefore be reversed; costs disallowed; and it is hereby so ordered.

C. B. Dunbar and *Arthur Barclay,* for appellant.

L. A. Grimes, for appellees.

S. E. SNETTER, Appellant, *v.* H. E. SNETTER, Appellee.

ARGUED NOVEMBER 10, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. To obtain a change of venue in a civil suit the applicant must apply therefor ten days before the first day's meeting of the court for the term at which the cause was docketed, and the application must be supported by an oath taken before the judge.
2. A motion for continuance based upon the absence of a material witness should, if supported by an affidavit of the moving party, be granted for at least one term unless the court reaches the conclusion that said motion is made only to baffle the suit or defeat justice or the party in opposition thereto will admit the facts the absent witness is expected to prove.

Mr. Chief Justice Dossen delivered the opinion of the court.

Divorce—Appeal from Judgment. This is a suit of divorce brought by the plaintiff, now appellee, against his wife, the defendant below, now appellant, for adultery. The case was heard and determined at the August term, A. D. 1919 of the Circuit Court for the first judicial circuit, presided over by His Honor Corinthus E. Gibson, circuit judge. The trial resulted in a verdict and judgment for the appellee, plaintiff below, to which judgment exceptions were taken by appellant, defendant below, and the case brought to this court upon a bill of exceptions for review.

The case is brought up before us upon the following exceptions as laid in appellant's bill of exceptions:

"Because on the 11th day of August, A. D. 1919, the defendant filed a motion for change of venue in said case to the second judicial

circuit, Grand Bassa County which motion Your Honor on the 12th day of August, 1919, overruled, to which ruling defendant excepts."

Looking into the records we find that on the eleventh day of August last, which was the first day's meeting of the court below for the term, after the case had been reached on the docket, appellant through her counsel tendered to the trial judge a motion praying a change of venue to the second judicial circuit, which motion the court below disallowed on the ground that it was not made within the time-limit prescribed by the statute.

The statute of 1865, relating to the change of venue in civil suits, provides that the application shall be made ten days before the first day's meeting of the court from which the case is sought to be removed, and that the application must be supported by an oath which must be taken before the judge. The records show that the statute in neither of these respects was observed. Not only had the session of the court commenced prior to the application for the removal of the suit, but as the records show, the case had been reached on the docket and assigned for hearing. The appellant, defendant below, showed laches on her part by not exercising at the proper time and in the proper manner the right which the statute permitting a change of venue was intended to secure to her, and, it was therefore not error in the trial judge for so deciding and for disallowing the motion.

The second exception is taken as follows: "Because defendant says, that on the 12th day of August, A. D. 1919, she filed a motion for continuance of said cause to the November term, A. D. 1919 of this court for the reasons that her witnesses were not accessible at the present session of this court, which motion Your Honor overruled, to which ruling defendant excepts," etc.

This court has repeatedly held that a motion for continuance founded upon legal grounds and verified by an affidavit should be allowed in all cases when the furtherance of justice demands it, unless the court is satisfied that the continuance is sought only to baffle justice or prolong the suit. Among the grounds laid down in the law as the basis for the granting of a continuance, is that of the absence of a material witness and the application should show that due diligence has been taken to secure the witness' presence at the trial. In the case *R. R. Appleby, Manager of the Bank of British West Africa, Limited v. Thomas Freeman and Son,* decided by this

court at its October term, 1916, we held that: "a motion to continue a case based upon the absence of a material witness or other cause, is addressed to the discretion of the court; but an improper and unjust abuse of such discretion, may be remedied by the superior court." * * * "The practice in Liberia," we said, "is to grant the continuance for one term at least, unless the opposite party will admit the facts to be proved by the witness."

In the case *Wright v. Bacon* (I Lib. L. R. 477) this court in ruling on a similar motion said: "We would observe that an application for a continuance is addressed to the discretion of the court, to which it is made. There are, however, certain legal grounds laid down as good cause for the postponing of a trial, and we are of the opinion, that if it is founded upon one of the said legal reasons and is well supported by an affidavit, the court in the furtherance of justice should allow a postponement; unless it should come to its notice, that the application is made solely with the view to baffle the suit or to defeat justice."

The motion for continuance in all the cases at bar alleged not only the absence of *a material* witness, but of *all* the witnesses for the defendant, now appellant. The records do not show this fact was in any degree controverted by the plaintiff, nor are there any circumstances surrounding the application upon which to base the presumption that the application was made to baffle the suit or to defeat justice.

It is true the witness had not been subpœnaed, but this was accounted for by the fact that one of them was then on the Northern Boundary of the county on Government service, and the other in another county and could not be reached in due time. Under such circumstances it would seem to us to impute no negligence to the defendant now appellant for not having had them subpœnaed, in view of the fact that the case had not been long pending. In view of the foregoing circumstances we are of opinion that in the furtherance of justice and to promote a fair and impartial trial to both parties the motion for continuance ought to have been allowed and the trial postponed until the following term as prayed for. We hold that the trial judge erred in overruling said motion and proceeding with the trial, when it appeared that the defendant had it not in her power to have her witnesses present.

There are other exceptions to the proceedings and final judgment

in the premises which, can not properly be considered now because the fact that our adjudication of the second exception terminates the appeal so far as it can be heard under the circumstances. The case is therefore remanded for trial *de novo* at the ensuing May term of the Circuit Court, first judicial circuit, with instructions to admit all competent evidence tendered on both sides and to hear and determine the cause upon the issue of fact. And it is so ordered.

R. E. Dixon, for appellant.

C. B. Dunbar, for appellee.

THE CAVALLA RIVER COMPANY, Limited, by Lancelot Mathews, their agent at Cape Palmas, Plaintiff in Error,
v. JOHN HAROLD DICKINSON FREDERICKS,
Defendant in Error.

ARGUED DECEMBER 23, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. The law to be applied in suits for the breach of contracts is that: as to the mode of solemnization the *lex loci actus* must generally be followed; they should be interpreted according to the *lex loci contractus;* and as to the choice of remedies for the breach of, and the competency of witnesses to establish, the *lex fori* governs.
2. One is not therefore compelled to sue for a violation of a contract in the jurisdiction of the *lex loci contractus* because the agreement provides that it must be interpreted according to the rules of law obtaining thereat, and hence the *lex loci solutionis* may properly take jurisdiction of the suit.
3. One may with impunity neglect to probate and register an agreement which does not convey real estate; nor is the validity of agreements not purporting to effect the transfer of real estate affected by the neglect to affix a revenue stamp.
4. One who was a party to a reference is not estopped from bringing a suit in spite of an award if the subject matter of the new action was not within the submission to the arbitrators, nor passed upon by them.
5. In actions against corporations it is sufficient to describe the corporation sued by its corporate name.
6. A defendant may be required to produce deeds or other writings in his possession to be used by a plaintiff at the trial either by a notice given in his written pleadings or by a *subpœna duces tecum.*
7. When a jury empanelled in a case is charged with such misconduct as is prejudicial to the interest of a party, the act complained of should be brought to the notice of the court before the jury is dismissed.

Mr. Justice Johnson delivered the opinion of the court: