duced, and is now in general use. In the Courts of Probate and Divorce the witnesses are also examined in open Court. There can be no doubt that whenever there is a conflict of evidence the best way of extracting the truth is by oral examination of the witnesses in open Court, in the presence of the Judge or jury who have to to decide the case; but there are often formal and collateral matters necessary to be proved in the course of a suit which can be conveniently proved by affidavit, and written evidence may sometimes be combined with oral evidence so as to save expense, and facilitate a speedy trial.

We recommend, for these reasons, that, in the absence of any agreement between the parties, and subject to any general order of the Court applicable to any particular classes of cases, the evidence at the trial should be by oral examination in open Court, but that the Court should have power at any time to direct that the evidence in any case, or as to any particular matter at issue, should be taken by affidavit, or that affidavits of any witnesses may be read at the trial, or that any witnesses may be examined upon interrogatories or otherwise before a commissioner or examiner. Any witness who may have made an affidavit should be liable to cross-examination in open Court, unless the Court or a Judge shall direct the cross-examination to take place in any other manner. Upon interlocutory applications, the evidence should, we think, as a general rule be taken by affidavit, but the Court or a Judge should upon the application of either party have power to order the attendance, for cross-examination or otherwise, of any person who may have made an affidavit.

The existing practice as to requiring admissions of written documents should, in our opinion, be continued. We think, also, that a similar practice might with advantage be extended to the admission of certain facts as well as documents; and therefore we recommend that if it be made to appear to the Judge, at or after the trial of any case, that one of the parties was a reasonable time before the trial required in writing to admit any specific fact, and without reasonable cause refused to do so, the Judge should either disallow to such party or order him to pay (as the case may be) the costs incurred in consequence of such refusal.

Incidental Powers.

Some other incidental powers which the Court, in our opinion, ought to possess, may be conveniently mentioned in this place.

The Judge at the trial should, without consent of the parties, have power to reserve leave to the Court to enter a nonsuit or verdict, and when the Judge at the trial has reserved any question of law, he should have power to direct the cause to be set down for argument before the Court, without motion for a rule *nisi*. Upon motion for a new trial the Court should have power, although no leave has been reserved at the trial, to order a nonsuit or verdict to be entered.

The time within which an application must be made for a new trial should be regulated by general orders of the Supreme Court.

We recommend that every order of a Judge at Chambers or at Nisi Prius should have the same force and effect as a rule of Court now has, and that a Judge sitting in Chambers or at Nisi Prius should have the same power to enforce, vary, or deal with any such order by attachment or otherwise as is possessed by the Court, but the Court should have power, upon application in a summary way, to enforce, vary, or discharge any such order.

We think that a Judge should have power, at any time after writ issued, upon being satisfied that the plaintiff has a good cause of action or suit, and that the defendant is about to leave, or is keeping out of the jurisdiction in order to avoid process, to order an attachment to issue against any property of the defendant which may be shown to be within the jurisdiction; such property to be released upon bail being given, and in default of bail to be dealt with as a Judge may direct. This power, which is analogous to that now vested in the Court of Admiralty, may make the use of writs of Capias and Ne exeat regno by the Court of Common Law and Chancery (which are sometimes used oppressively) less frequent. It may also render the retention of the process of foreign attachment in the Lord Mayor's Court in the City of London unnecessary.

Costs.

In the Court of Chancery, the Court of Admiralty, and the Courts of Probate and Divorce, the Court has at present full power over the costs. We think that the absence of this power in the Courts of Common Law often occasions injustice, and leads to unnecessary litigation. We therefore recommend that in all the Divisions of the Supreme Court the costs of the suit and of all proceedings in it should be in the discretion of the Court.

General Orders.

Power should be vested in the Supreme Court to regulate from time to time by general orders the procedure and practice in all its divisions, and to make such changes in the duties of the several officers of the Court, as may from time to time be thought fit, and may be consistent with the nature of their appointments.

Sittings and Assizes.

We now proceed to consider the present general arrangements for the conduct of judicial business.

The sittings during Term are occupied, together with a portion of those after Term, in the Courts of Common Law, by business in banco, Nisi Prius sittings going on at the same time. Some descriptions of business in the Courts of Common Law can only be transacted during Term. In all other Courts