was necessary to defend herself against the attack made upon her person and rights, the law would justify her in the employment of such force. Nor would the use of excessive force by her in resisting a personal assault be a defence to her claim for damages; it may be taken into consideration by the jury upon the question of the amount of compensation to be given to her, but not as a defence to the action.

That the jury, for a wrong like that complained of by the plaintiff may go beyond mere compensatory damages, and may give vindictive damages, by way of punishment. Verdict for plaintiff. Fifty dollars damages*.—*Philadelphia Legal Intelligencer.*

## CORRESPONDENCE.

### *Hearing fees on confessions.*

To the Editors of the Local Courts' Gazette.

Gentlemen,—I cannot agree with you in saying that a hearing fee is chargeable on a confession of judgment.

The 84th and 85th sections of the Act respecting Division Courts, gives the judge authority to hear, try, and give an order or judgment in the cause. The charges in schedule B for the hearing and order have reference to these sections.

The confession of judgment is taken by the clerk or bailiff, under the authority of the 117th section, and I find nothing in this section to constitute a hearing. On its production to the judge, and its execution proved, *judgment may be* entered thereon. There is no necessity for his giving an order to that effect; the statute gives the power. He does not inquire, as in the case of an undefended cause, how much is due, and he awards no amount; he merely administers the oath to the officer intrusted with the taking of the confession. Hearing is synonymous with trial, an inquiry to ascertain a disputed fact, or to ascertain an uncertain amount. This confession having been given to an accredited officer of the court, the judge's authority to hear or inquire is taken away; he cannot increase or diminish the amount confessed; he exercises no judgment, gives no opinion or decision. The framers of the statute evidently contemplated no charge for a hearing, for they prohibit the charge even for an *order*. Neither plaintiff nor defendent need be present, and there *can be no hearing* of the parties. If, indeed, the judge orders the time for payment, that is an *order*, for which nothing can be charged. He merely looks at the affidavit, to see that the requirements of the 117th and 118th sections have been complied with. Administering an oath is not a hearing.

It would be no boon to a defendant to permit him to give a confession, if he is to be charged with a hearing: better for him to allow judgment to go by default, and save the expense of the affidavit of the execution and the hearing. The intention of the framers of the act certainly was to save costs, and this would only increase it. The reference to the judge is only to prevent fraudulent practices.

Yours,

Judex.

[We gladly insert the letter of "Judex," as of course our only object is to facilitate the discussion of every question upon its merits. But at the same time, we must frankly confess that our opinion on this subject, as already expressed, remains unchanged.—Eds. L. C. G.]

### *Division Court execution — When it binds defendants goods.*

To the Editors of the Local Courts' Gazette.

Gentlemen,—Will you oblige a subscriber by answering the following question in your next issue?

Does a Division Court execution bind the goods of the defendant from the time that it is placed in the bailiff's hands, so as to prevent such defendant from disposing of the goods to a *bona fide* purchaser for valuable consideration, or does it bind the goods of the defendant only from the time of seizure? If you know of any cases in point, please cite them.

A Bailiff.

Kingston, June 9, 1865.

[We know of no case which decides this question. It was doubted in *Culloden* v. *McDowell*, 17 U. C. Q. B. 359, whether a Division Court execution could bind defendant's property "before an actual seizure;" but the point was not decided. So far, however, as we can express an opinion in the absence of authority, we should say that it does not bind till an actual seizure.—Eds. L. C. G.]

* It will scarcely be credited by "benighted" Canadians that such an occurrence as was the foundation of this action could have taken place in a professedly "free and enlightened" country. *Profession*, however, is one thing, and *practice* another.—Eds. L. C. G.