

subpœna as "higher authority," and free from censure. He is not bound to enquire whether or not the order referred to in the rule was produced to the officer issuing the subpœna. He had to presume that the subpœna was issued in accordance with the rule, and was, we think, in the absence of any law to the contrary, bound to obey the subpœna, or be in contempt.—Eds. L. J.]

*Streets in a township—Who bound to repair—  
Overseer of highways.*

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—You would confer a favor upon many of your readers connected with the management of municipal affairs, by giving in your next number an opinion upon the following case:

The village of P., not a corporation or police village, is situated within the municipality of the township of B., and contains, say fifty dwellings and two hundred and fifty inhabitants. A public thoroughfare passes through the centre of the village, from which, on either side, streets are laid off at right angles; one of which leads to a railway station and a grist mill, another to the town hall, a third to a church, and the rest to the residences of the villagers. These streets are not otherwise public roads or highways, than as they are shown and named in the surveys made by the original proprietors, and deposited in the registry office, in pursuance of Con. Stat. cap. 93, sec. 39, and by use; that is, the Municipal Council has not declared them to be public highways, or assumed them as such. The ground on which the village is built is wet and swampy, and the streets, with a little use, become nearly impassable in the wet seasons. The inhabitants request the Township Council to order a *part* of their statute labour to be applied on these streets. The Council, while they admit the abstract justice of the claim, doubt their power by law so to expend any money or labour.

The question, therefore, is, 1st, Has the Council power, without formally assuming the streets as township roads, to order any work to be done thereon? Or, 2nd, Can the pathmasters for the division, without such order, do anything towards repairing them?

I remain, gentlemen, yours truly,

RUSTIC.

[1. We think the Township Council has power, without formally assuming the public travelled streets as public roads, to order work to be done upon them; but, until established and assumed by by-law of the corporation, it would seem to us that the corporation is not bound to keep them in repair.

2. The powers of the pathmaster or overseer of highways are not defined by law, and in the absence of express authority from the Council we should doubt his power to repair such roads.—Eds. L. C. G.]

Co. Victoria, July 24, 1865.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—In the last number of the *Gazette*, I see you have been asked a question by a bailiff—"Does a Division Court execution bind the defendant's property from the time it is placed in the bailiff's hands?"—and I was rather astonished to see your opinion, "that it did not, until after actual seizure."

As the *Law Journal* has been chiefly my guide since first published, I have turned to the number for January, 1857, page 23, and there you quote from the Bailiff's Manual, which of course you give as sound authority, that a bailiff is justified in seizing goods sold by a defendant *after* the execution has been placed in the officer's hands.

In the number of the *Law Journal* for July, 1857, you quote C. L. P. Act, 1857, sec. 24, and in your opinion on it you say, "The goods of defendant *are held* from the time the execution is delivered to the officer."

You will add another to the many obligations already incurred by the bailiffs of Upper Canada, by explaining which of these opinions we are to act under.

I am, Gentlemen, your obt. servant,

A BAILIFF.

["A Bailiff" must not attribute to writers in the *Law Journal* an infallibility of opinion which they do not claim. The judges on the bench not unfrequently change their views as to questions of law after argument before them, or are set right on appeal.

The writer of the Bailiff's Manual, which appeared some years ago in the *Law Journal*, is a lawyer of great experience, and whose opinion is entitled to much weight, and as a general rule we have little hesitation in adopting his view of what the law is; but it is quite possible that he and the conductors of this