per cent. by weight and the "Tonic Porter" contained between 4 and 5 per cent. of alcohol by volume and between 3 and 4 per cent by weight. The defendant gave evidence on his own behalf and stated that he he had been manufacturing "Hop Tonic" and "Tonic Porter" in the city of London and selling them during the past five years and that they did not contain more than 2 per cent. of alcohol. He said that about seven years ago the license inspector of the city of London had complained that the beverages referred to contained too much alcohol and that in consequence of such complaint he reduced their strength so that they did not contain more than 2 per cent. He also stated that they were not intoxicating. On behalf of the defence Mr. A. V. Seeborn, an assistnnt public analyst of the city of London, was called and gave evidence. He swore that the defendant asked him to analyze the contents of two bottles, one represented to be "Hop Tonic" and the other "Tonic Porter." The defendant in his evidence said that these two bottles contained samples out of the same vessels from which he had supplied the license inspector. According to the evidence of Mr. Seeborn the "Hop Tonic" contained 1.75 per cent. of alcohol by weight and 2.20 per cent. by volume, and the "Tonic Porter" 1.56 per cent. by weight and 1.96 per cent. by volume. The prosecution did not offer any evidence to prove that the beverages in question were intoxicating but relied upon the case of Reg. vs. Wotton, a decision of the learned senior judge of the county of York, reported in volume 34, C. L. J. N. S., p. 746, and asked me to convict the defendant upon the authority of that case for selling liquor without the necessary license therefor.

I have examined that case carefully and have come to the conclusion that it is not an authority warranting me in convicting the defendant upon the evidence given in the case in hand because I find that in Reg. vs. Wotten a great deal of evidence was given for the purpose of showing that the beverage in that case called "Blue Ribbon Beer" was intoxicating and the learned judge must have believed that it was intoxicating for at page 749 he says "No one can be allowed to offer for sale without a license, under the guise of a temperance beverage, a liquor which is capable, if freely drunk, of producing the incipient stages of intoxication. I think Blue Ribbon Beer will do this if used freely by the class of persons last mentioned, though doubtless its effect upon some seasoned drinkers may be questionable." It appears from the decision in Reg. vs. Wotteu that the Blue Ribbon beer in question in that case contained between two and three per cent of alcohol and Mr. Donahue argued that according to Mr. McLachlin's evidence, "Hop Tonic," and "Tonic Porter" contained a greater per centage of alcohol than Blue Ribbon Beer and therefore if I believed his evidence, I might and ought to convict the defendant for unlawfully selling liquor without a license, though he offered no evidence to show that either "Hop Tonic" or "Tonic Porter" was intoxicating, and though the defendant swore that neither of them was intoxicating. I am unable to agree with him. The interpretation clause of "The Liquor License Act," sub-section 1, of section 2, defines "liquors" or "liquor" as follows: "Liquors" or "liquor" shall include all spirituous or malt liquors and all combinations of liquors and drinks and *drinkable liquids which are intoxicating.*" The beverages in question are not spirituous or malt liquors and in my opinion it must be shown that they come within the latter part of the interpretation clause and in order to warrant a conviction it was necessary to have proven that they were intoxicating as was done in the case of Reg. vs. Wotten. The British Revenue Act of 1885 prohibits the sale of any liquor which is made or sold as a description of beer and which on analysis thereof contains more thau 2 per cent of proof spirit which equals 1.14 per cent of absolute alcohol by persons not holding licenses under the Inland Revenue Act, but there is no similar provision in our Liquor License Act. The fact that the Parliament of Great Britain has passed the above Act affords an argument, it seems to me, that it is for the Legislature of this Province to fix the maximum amount of alcohol to be contained in drinks of the kind in question and not for the courts. In the United States courts, authority is divided as to whether alcohol is a spirituous and intoxicating liquor but according to the weight of authority it is not. In the case of Bennett vs. People, 30, Ill. 389, the court speaking of alcohol said, "It is not in common parlance so considered (as an intoxicating liquor), although it is the basis of all spirituous liquors." In the case of Reg. vs. McLean, 35, C. L. J. N. S., p. 241, the senior judge of the county of York held, following the analogy of Reg. vs. Wotten, that diluted lager beer, showing on analysis 2.05 per cent of alcohol, is an intoxicating liquor within the prohibition of the Liquor License Act. The report of this case does not show whether any evidence was given to prove that this lager beer was intoxicating, but I do not think it is necessary to prove that lager beer is intoxicating and therefore that case is distinguishable from the present case. According to the weight of authority in the United States courts, the court will take judicial notice that lager beer is malt liquor and that it is intoxicating. The Liquor License Act expressly mentions *malt liquors* and all combinations of liquors and drinks and lager beer being *malt liquor* it is not necessary to prove that it is intoxicating. The following cases may also be referred to: Reg. vs. Beard, 13 O. R., 608; Northcote vs. Brinker, 14, A. R., p. 373 and Reg. vs. St. John, 36 C. L. J. N. S. p. 30. I must therefore dismiss the case but there will be no costs.

London Street Railway Company v. City of London.

Judgment in action tried without a jury at London. Action to have it declared that by-laws 2,099, 2,100, and 2,101, passed by the council of defendants on the 21st July, 1902, are invalid, and for an injunction restraining defendants from enforcing any of such by-laws; also for a mandamus to compel the Mayor of the defendants to sign and execute by-law 2,083, passed on the 23 June, 1902. This by-law was passed in accordance with a resolution of the council of the 29th April, 1902, authorizing the plaintiffs to extend their tracks on certain streets in the city. The plaintiffs did work on the strength of this by-law and resolution. By the subsequent by-laws the routes were changed and varied. Held, that by-law 2,083, not having been signed by the Mayor, who was the presiding officer at the meeting at which it was passed, was inoperative; R. S. O., chapter 223, section 333; Canada Atlantic Railway Co. v. city of Ottawa, 12 S. C. R. 379; Wigle v. village of Kingsville, 28 O. R. 378. Until a by-law was passed and formally accepted by plaintiffs by an agreement binding on them, they were acting without authority in building a line of railway and running cars thereon. The plaintiffs were, therefor, not entitled to the mandatory order asked for to compel the Mayor to sign the by-law. The plaintiffs asked leave to amend so as to claim, in the alternative, a mandamus to the council to pass a by-law in accordance with the resolution of 29th April. It was urged that, as the council had passed the resolution providing for the building by the plaintiffs of the new lines, and as the plaintiffs had proceeded with and built some of the lines in accordance with the resolution and with the sanction of the city engineer, who furnished the grades for the lines on Beaconsfield avenue and Wortley road, the defendants were bound. Held, that the engineer could not bind defendants by giving the grades; the manager of plaintiffs obtained the grades from the engineer, and proceeded with the building of the lines, taking his chances of the resolution being ratified by by-law. The amendment should not be allowed, as upon the facts plaintiffs are not entitled to the mandamus. Held, also, that the council had authority to pass by-law 2,099, changing and varying the routes, and by-law 2,100, regulating the speed and service of the cars on the various routes, was also valid. As to by-law No. 2,101, requiring plaintiffs to lay down a new line and extend the existing lines to the extent of 7,380 feet of track: Held, that having regard to the taking into the city of London of the village of London west, with its additional street railway mileage, the defendants are not entitled to all the tracks mentioned in by-law No. 2,101, and that by-law is bad. Judgment for plaintiffs declaring that by-law 2,101 is invalid and of no effect. Judgment for