erly registered vehicle but also one who knows or ought to know of the improper registration is precluded from recovery. G. L., c. 90, para. 9.)

It is interesting to note that one of the two cases (*Nash v. Lang* (1929) 268 Mass. 407, 167 N. E. 762) relied upon by the Court for the doctrine of "strict compliance" is directly contrary to such an idea. There the Court held the registration to be proper though the applicant answered the question "From where did you purchase the vehicle?" incorrectly. The Court said the answer "did not affect the main purpose of registration which is to afford identification of the owner and of the motor vehicle." In *Harlow v. Sinman* (1922) 241 Mass. 462, 135 N. E. 553, the Court allowed recovery though the plaintiff was driving a car registered in her own name alone when the ownership was held in common with her daughter. In *Crompton v. Williams* (1913) 216 Mass. 184, 103 N. E. 298, the Court held a registration by the owner in the trade name of his company valid where the name was well known and the purpose was not concealment. (In the *Furtado* case the Court intimated if Popkin had been sole owner the registration in "United Produce Co." would have been valid.) In *Bacon v. Boston Elevated* (1926) 256 Mass. 30, 152 N. E. 35, a married woman's registration in her maiden name was held invalid, but here the purpose was concealment, according to the Court, as the woman was known only by her married name.

But the courts have been Draconian in such decisions as *Kilduff v. Boston Elevated* (1924) 247 Mass. 453, 142 N. E. 98, and *Hanley v. American Ry. Exp.* (1923) 244 Mass. 248, 138 N. E. 323, and so there is precedent for the strict compliance exacted in the *Furtado* case. However, if the purpose is, as the Court has said in the principal case, "to afford easy identification of the owner of the motor vehicle involved in an accident 'and' to avoid ambiguous or confusing registration," it is hard to see why the courts should be so ready to thrust such a dire penalty upon owners of cars and others when the vehicles may have been registered in good faith and in a manner sufficient to reveal to the Commonwealth who are the owners. Apparently the courts are content to overturn all sense of justice merely to render the identification of vehicles "easier." T. C., '35.

MUNICIPAL CORPORATIONS—CONSTITUTIONAL DEBT LIMITATION.—The defendant owned and operated its own light plant and public waterworks. The plant produced a net profit of $10,000 per year which went into the general fund of the town. The board of trustees entered into an agreement with Fairbanks-Morse & Co. for the purchase of two engines and other equipment. A down payment was provided and the balance in monthly installments. The board passed an ordinance providing for the payment of pledge orders out of the net earnings of the plant only; the indebtedness was not to be a general obligation of the town. The plaintiff, a taxpayer, seeks to restrain the defendant from carrying out the terms of the agreement. *Held:* The general indebtedness of the town is increased by the contract beyond the constitutional limitation and the authorizing ordinance is consequently void. *Reimer v. Town of Holyoke* (Colo. 1933) 27 Pac. (2d) 1032.

State constitutions universally provide a limit of indebtedness beyond which a municipality cannot go. 1 Dillon, Municipal Corporations (5th ed. 1911) 337. The purpose of these provisions is to prevent the abuse of the corporate credit and the burdensome taxation which would necessarily re-

sult from that abuse. *Law v. People ex rel. Huck* (1877) 87 Ill. 385; *Butler v. Andrus* (1907) 35 Mont. 575, 90 Pac. 785. No difficulty of interpretation has been presented with the exception of the meaning of the term "indebtedness." The process of exclusion has worked most effectively toward the clarification of its meaning. 6 McQuillin, Municipal Corporations (2d ed. 1928) sec. 2374. For instance, "indebtedness" does not include tort liability, *State ex rel. Pyle v. University City* (1928) 320 Mo. 451, 8 S. W. (2d) 73, contracts for future indebtedness to be incurred provided contracting party perform the agreement out of which the debt may arise, *Walla Walla v. Walla Walla Water Co.* (1898) 172 U. S. 1, warrants for money actually in the treasury, *Doon Township v. Cummins* (1891) 142 U. S. 366, warrants for necessary expenses in maintaining the existence of the municipality in a minority of instances, *Hull v. Ames* (1901) 26 Wash. 272, 66 Pac. 391, contra, *Barnard & Co. v. Knox County* (1891) 105 Mo. 382, 16 S. W. 917, and obligations payable out of a special fund. McQuillin, *op. cit.*, sec. 2387.

The last exception has been the occasion for the drawing of fine distinctions. It is usually said that the obligation is not within the meaning of the constitutional provision if it is payable out of a special fund and the municipality is not otherwise liable. *Franklin Trust Co. v. Loveland* (C. C. A. 8, 1924) 3 F. (2d) 114; *Winston v. Spokane* (1895) 12 Wash. 524, 41 Pac. 888. Cf. *Holmgren v. Moline* (1915) 269 Ill. 248, 109 N. E. 1031. The latest cases have gone to greater pains to find a general liability resting upon the municipality; if the city has to pay from its general funds in any manner the limitation applies. This has been held to include payments out of tax funds to the municipally owned plant for electricity used in the lighting of the streets. *Campbell v. Ark.-Mo. Power Co.* (C. C. A. 8, 1932) 55 F. (2d) 560; *Hight v. Harrisonville* (1931) 328 Mo. 549, 41 S. W. (2d) 155; see, *Miller v. Buhl* (1930) 48 Ida. 668, 284 Pac. 843, 72 A. L. R. 682. It is significant that in the first of these three cases the attempt was successfully made to prevent the city from operating its newly constructed power plant in competition with the plaintiff. This extension of the meaning of the limitation is exemplified by *Garrett v. Swanton* (1932) 216 Cal. 220, 13 Pac. (2d) 725, which says that the "special fund" doctrine is established in that state with two exceptions: if the municipality is obligated directly or indirectly to feed the special fund from its general or other revenues in addition to those arising solely from the specific improvement contemplated or if the municipality may suffer a loss if the special fund should be insufficient to pay the obligation incurred.

The principal case is at least a step away from that court's former position of less strict scrutiny of any possibility of the city's general liability. The earlier decisions were more lenient in allowing the municipality to extend its indebtedness. *Shields v. Loveland* (1923) 74 Colo. 27, 218 Pac. 913, says that the meaning of the constitutional limitation must be determined from its purpose of prevention of overburdening of the public and the bankruptcy of the municipality. The bonds there payable only out of revenue derived from the new power plant were held to be not within the provision. This position was reiterated by *Searle v. Haxtun* (1928) 84 Colo. 494, 271 Pac. 629. The fact that the annual net profit of $10,000 is withdrawn from the town's general treasury and that fund would have to be raised by taxation does not mean that the town is liable on the obligation. To say so is clearly a straining of the ordinary meaning of language. It is unjust to say that because

the municipality has run its utility profitably and availed itself of the profit it cannot improve the plant without violating the constitutional debt limitation. It is questionable whether the interests urging this position are particularly sincere in their concern for the welfare of the municipality.

N. P., '34.

WITNESSES—COMPETENCE—MARITAL RELATION.—The defendant was convicted of conspiracy to violate the prohibition law. He called his wife to testify in his behalf but she was excluded upon the ground of incompetency. *Held:* Changed conditions have removed the reason for the old common law rule disqualifying a wife from testifying on behalf of her husband in a criminal trial. *Funk v. United States* (1933) 54 S. Ct. 212.

Various reasons have been advanced for the common law incapacity of the one spouse to testify for the other. Among these the most important are marital identity of interest, *Jin Fuey Moy v. United States* (1920) 254 U. S. 189, bias of affection, *Johnston v. Slater* (1854) 11 Gratt. (Va.) 321, disturbance of the marital peace, *Mary Griggs' Case* (K. B. 1660) T. Raym. 1; *Kelley v. Proctor* (1860) 41 N. H. 139. Certain exceptions were recognized, generally on the basis of necessity. *Turner v. Overall* (1903) 172 Mo. 271, 72 S. W. 644; *Tucker v. State* (1882) 71 Ala. 342; *McGill v. Rowand* (1846) 3 Pa. St. 451.

Statutes, in one form or another, have been enacted qualifying the spouse. The status of the rule in each jurisdiction depends largely upon the wording of the particular statute. 5 Jones, Evidence (2d ed. 1926) 4010; 1 Wigmore, Evidence (2d ed. 1923) sec. 488. Statutory removal of the interest disqualification not expressly extending to husband and wife does not remove their disability to testify for or against each other. *Lucas v. Brooks* (1873) 18 Wall. 436; *Fishback v. Harrison* (1909) 137 Mo. App. 664, 119 S. W. 465. The preservation of the marital peace remains as sufficient reason for the retention of the rule. The clear tendency of the statutes, however, is to relax the common law rule. See 5 Jones, Evidence (2d ed. 1926) 4010.

The previous words of the Supreme Court were exactly contrary to the rule of the principal case. *Hendrix v. United States* (1911) 219 U. S. 79; *Jin Fuey Moy v. United States* (1920) 254 U. S. 189. In overruling these cases the Court justified itself by quoting that it was not precluded "from examining this question in the light of general authority and sound reason." *Benson v. United States* (1892) 146 U. S. 325; *Rosen v. United States* (1918) 245 U. S. 467.

Too often legislation has been the only source of legal advance. The basic philosophy of the common law requires the judge to take consideration of greatly changed conditions. Otherwise why the maxim *cessante ratione cessat lex?* The "flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law." *Hurtado v. California* (1884) 110 U. S. 516. See *Benson v. United States* (1892) 146 U. S. 325; *Rosen v. United States* (1918) 245 U. S. 467. The tendency of judges, however, has been too frequently to adhere strictly to the letter of the principle of *stare decisis.* When a court assumes the broader and more sociological outlook some courage is shown even though the particular legal rule involved is not of the greatest importance in itself and even though reliance is placed upon past judicial utterances in an attempt to justify the position. If a