case, and questions of law may not be certified to the supreme court without the consent of the defendant. The state may review a judgment quashing an indictment for an information, or sustaining a demurrer thereto, only when such power is expressly conferred by a constitutional or statutory provision. State v Ruegemer, ... M ....., 57 NW(2d) 153.

606.05 WHEN DISMISSED, COSTS

The action or decision of a board of appeal created under the provisions of the School Reorganization Act, now sections 122.40 to 122.57, being legislative and not judicial, cannot be reviewed by certiorari. In the instant case the board only modified a recommendation plan and did not attempt to organize the school district. State ex rel v Schweickhard, 232 M 342, 45 NW(2d) 657.

Where an employer provides a safe and reasonable means of ingress to and egress from his premises, and an employee, for his own convenience, chooses not to use it but instead finds a ladder and scales a ten-foot fence and is injured in so doing, such injuries are not caused by an accident arising out of the course of his employment. It is common knowledge that a ten-foot high fence located around a building under construction is there to prevent ingress and egress at places where the fence is located. Corcoran v Fitzgerald Bros., ... M ....., 58 NW(2d) 744.

Where, on certiorari to review a denial of compensation under the Workmen's Compensation Act, the evidence discloses several possible causes of the employee's condition, and where neither the pleadings nor the findings indicate what facts are alleged or found to be the cause of the condition, the cause is remanded for a hearing de novo with the suggestion that where the evidence indicates several possible causative conditions, the findings indicate which of these conclusions is found to be the true cause. Manthe v Employers Mutual Casualty Co., ... M ....., 58 NW(2d) 758.

CHAPTER 607

SUPREME COURT, COSTS AND DISBURSEMENTS

607.01 COSTS AND DISBURSEMENTS

Disbursement for printing used previously in appellate cases. 37 MLR 622.

Costs of verbatim recording. 38 MLR 43.

In condemnation proceedings the state is acting in its sovereign capacity and costs and disbursements cannot be taxed against it, there being no statutory provision permitting it. State v Bentley, 225 M 244, 28 NW(2d) 770.

By intervention a third party becomes a party to a suit pending between others. An intervenor is liable for costs if he fails to sustain his claim and is entitled to recover costs if he prevails. State v Fitzsimmons, 226 M 557, 33 NW(2d) 854.

By obtaining modification of order relating to alimony, husband defendant is prevailing party, entitling him to his costs and disbursements under the rules; but following the rule in Colliers v Colliers, 221 M 343, the supreme court is vested with discretion in awarding costs, but not as to disbursements. Loth v Loth, 227 M 387, 35 NW(2d) 542.

The supreme court is authorized to allow costs and disbursements in favor of the prevailing party on appeal. A modification of a judgment entitles the party obtaining the modification to costs on appeal and to disbursements even though the disbursements were made in providing a record and brief on issues on which the party obtaining the modification did not prevail. Hildebrandt v Hagen, 228 M 353, 38 NW(2d) 815.

Filing petition for rehearing did not stay taxation of costs on appeal; and when prevailing party failed to tax costs within 15 days after the filing, the losing party was entitled to have judgment entered without inserting therein any allowance for costs and disbursements. Rutz v Iacono, 229 M 591, 40 NW(2d) 892.

If the judgment or order from which the appeal was taken is reversed or modified, the appellant is deemed the prevailing party and is entitled for reimbursements necessarily paid or incurred. Henderson v Northwest Airlines, 231 M 503, 43 NW(2d) 786.

Consideration of unnecessary, irrelevant, or immaterial matter on review. Muirhead v Johnson, 232 M 408, 46 NW(2d) 502; State v Webster, 231 M 309, 43 NW(2d) 116.

Where there were four appeals involved but one was an appeal in habeas corpus proceedings in which no costs or disbursements are allowable, and appellants partially prevailed in one of the three matters left to be considered, and respondent prevailed in two of the three matters left to be considered, an equitable adjustment under the circumstances required that appellants be allowed one-third of appellants' disbursements and respondents two-thirds of respondents' disbursements. Re Maloney's Guardianship, 234 M 1, 49 NW(2d) 576.

Costs paid or incurred for a transcript may be allowed only when such transcript was prepared exclusively for use before the appellate court, was so used in fact, and was necessary for a proper determination of the matter presented for review. In the absence of a definite showing to the contrary, it is presumed, in taxing costs, that a transcript was prepared exclusively for use before the appellate court when such transcript was actually so used and was necessary to the appeal. Northern States Power v Oslund, 236 M 135, 52 NW(2d) 717.

Rule is well established that if party prevails in obtaining modification of order of court below he is the prevailing party. Hildebrandt v Hagen, 228 M 360, 38 NW(2d) 820; Propper v Chicago, R. I. & P. R. Co., 237 M 386, 54 NW(2d) 840.

In the absence of manifest error the court under the doctrine of stare decisis must follow its previous decision; and while the common law is flexible and adaptive and applicable to new conditions, courts cannot abrogate its established rules any more than they can abrogate a statute. One spouse cannot maintain an action against the other for a personal tort committed during coverture. The driver of an automobile was not liable to the wife in tort for injuries sustained by her in a collision with an insured automobile and the liability insurer, having satisfied a judgment for such injuries against the insureds could not recover contribution from the injured person's husband, since his marital immunity from liability to the injured wife resulted in an absence of the element of common liability essential to action for contribution. American Auto Insurance Co. v Molling, ... M ....., 57 NW(2d) 847.

The cost of a special administrator's bond, filed in the probate court in compliance with the statute and not for the purpose of allowing a special administrator, as substituted plaintiff, to respond to appeal by defendant from an adverse judgment in an action instituted by the administrator's decedent, was not taxable against defendant upon affirmance of the judgment. LeMire v Nelson, ... M ....., 58 NW(2d) 189.