habitants. It is said in behalf of the defendants, that the bishop has never seen fit to interfere with the school; but that makes no difference. The fact that he has the right to, or the fact that he might stop that school if the teaching was not such as he could approve of, is one that ought not to be tolerated. This district is wealthy enough and populous enough to have and own its schoolhouse. It once took regular steps for the purpose of building one, but that was defeated, and in lieu thereof it was proposed to build by private contribution one to take its place; but now it is found not that it was for the purpose of taking the place of the public school building to be controlled by the inhabitants of the district through their legally elected school trustees, but that it is to be dominated over and controlled by the church; and this, too, when people who are not members of the organization have contributed, and when many members of the organization who have contributed, have objected to it, as is shown by many of the witnesses who have testified in this case.

I cannot avoid the conclusion, that it was an attempt, which had been so far successful, to get control by individuals in the interest of a single sect, of the public common school of this district; that the property in this schoolhouse belongs in good faith to the district. Of course, so long as a majority of the inhabitants of the district belong to one faith, they can elect members of that faith as school trustees, and in that way shape the policy of the school; but they ought not to undertkea to build upon foundations that are so deep that, when this condition of things is changed, if it ever should be, that they can take the property of the district and appropriate it to their own use.

I think that this property belongs to this district, and a decree should be entered requiring the defendant corporation to make a deed to the school trustees and their successors in office for ever; and in case they refuse or neglect to do so, either that they be proceeded against by attachment or that the clerk of this court be directed to execute, for and in behalf of said defendant corporation, a deed to said property, which shall be recorded and stand upon the records as and for a conveyance by such corporation.

The bill in this case avers that five hundred dollars is a reasonable solicitor's fee, and it is asked that this court assess the same as costs against the defendants. The answer denies that five hundred dollars is a reasonable solicitor's fee, and denies any authority of the court to assess any solicitor's fee above that which is provided by the fee bill.

In suits between strangers and trustees, the only costs that are ever allowed are the costs as between party and party. (2 Perry on Trusts, 519.) But where an action is brought by persons interested in the trust, to enforce the specific performance of a trust, or to administer it, or to declare a trust, and the court has jurisdiction over a trust fund, costs are allowed out of the fund as between attorney and client. (2 Perry on Trusts, Sec. 894; Trustees vs. Greenough, 105 U. S., 527.)

If the suit is made necessary by the misconduct or failure of a trustee to perform his duty, or his caprice or obstinacy, then costs may be assessed against the trustees personally as a penalty for their misconduct. (2 Perry on trusts, 900; Trustees vs. Greenough, supra). This case is not a contention between trustee and strangers. It is where a *cestui que trust* has been obliged to bring an action to preserve the trust property, and it has been made necessary by the misconduct of the school board, who were the legally authorized and appointed trustees of the school district, and the defendants Lee and Eastman, who held the title to this property in trust. So, if there was a fund in court, out of which costs could be allowed, as between attorney and client, the court would be authorized to make such allowance. But the trust property consists of a single piece of real estate, and, while I have no doubt that the court has jurisdiction over this property, yet it is not what is commonly designated a fund in the hands of the court for its administration. I have been referred to no precedent, and I have been able to find none, where courts have assessed costs against delinquent trustees personally, by taxing them as between attorney and client. The costs that are assessed, so far as I have been able to examine, are the costs allowed by the fee bill.

I appreciate fully what is said in trustees vs. Greenough, supra, as follows, "It would be very hard on him (the plaintiff) to turn him away without any allowance except the paltry sum which could be taxed under the fee bill, it would not only be unjust to him, but it would give the other parties entitled to participate in the benefits of the fund, an unfair advantage. He has worked for them as well as for himself, and if he cannot be reimbursed out of the fund itself, they ought to contribute their due proportion of the expense which he has fairly incurred." And that language applies forcibly to this case; and yet there is no fund, in the ordinary meaning of that term out of which the court can reimburse the plaintiff; and I feel inclined to the idea that it would be without precedent to assess such costs, that is, costs as between attorney and client, personally against the delinquent trustees.

In chancery, where a party is compelled to come into court in his own behalf and in behalf of other parties, and hereby creates or preserves a fund in which they all share, it is customary for the court to direct that such parties as avail themselves of the benefits of the plaintiff's labors and expense be charged their proportionate share of such costs and expenses; and the mere fact that they made application for the proceeds is evidence that they accept of such benefits and such proportionate share as deducted. But in this case what the plaintiff is seeking is to get his rights in this property in common with all other residents of this school district, by having the property transferred to the district itself, and they do not take any interest from it in severalty. (Trustees vs. Greenough, supra; 2 Perry on Trusts, Chap. 30.)

On the trial it was admitted by the defendants that $350 would be a reasonable solicitor's fee, but they deny the authority of the court to tax the same or make any charge thereof in this case. It would be but equitable and right that the district should pay this amount, and I think it is a proper charge against them, and that the trustees of the district ought to raise it by tax; and if the district itself were a party defendant to this action, it might be that the court would have authority to direct that it be paid by the district, but the distric as such is not made a party. Two of the trustees are made parties, but they are not brought in in such a way as to charge the district itself as a party; and as the fund itself is of such a nature that it is impracticable to order payment out of it, I see no remedy for the plaintiff in this case for such costs and expenses as are beyond what might be taxed as between party and party; and as to that he will have to be left to enforce his rights as against the district, if that can be done. But as to costs in the fee bill, which are usually taxed as between party and party, I have no doubt in this case but that the litigation has been made necessary by the wrongful conduct of the defendants Lee, Call and Eastman. The defendant Lee took the title to this property and has conveyed it to an organization in which a number of the inhabitants of the district are interested, and has persistently and constantly denied that the plaintiff, or the inhabitants of the school district generally had any right in it. The defendant Call was a member of the school board, and the law charged him with the duty of preserving the property of the district; and yet, in violation of his duty, he participated in the transactions by which the property was conveyed to Lee and from Lee to the defendant corporation, and when requested by the taxpayers of the district to take proceedings to reclaim it he persistently refused to do so. And defendant Eastman, who held the title to this property, committed the original wrong by conveying it to defendant Lee; and I think that the costs in this case should be taxed against them personally, and that the plaintiff should have execution therefor and the decree entered in this case should so provide.

H. P. HENDERSON, Judge.
Dated November 8, 1889.

A SUNDAY SCHOOTING.

About twenty minutes after 2 o'clock Sunday, Nov. 10, a tragedy was enacted on the sidewalk in front of the *Tribune* office, at the corner of Second South and West Temple streets, the parties engaged being employed in the *Tribune*