This is immaterial; the restriction is against erecting, not against maintaining a building. The price and the question of nuisance have been satisfactorily cleared up.

6. "Grant of Membery of the easterly three-quarters of an inch of the westerly 25 feet; we will also require grant from him of the easterly 2¼ inches of the said westerly 25 feet, as the survey shews the rear of the building to be encroaching to that extent . . ."

The legal estate in this 2¼ inches or so much of it as is not covered by the $10 deed from Membery is still in Membery; it is sworn that his partner said that for $12.50 he could get the deed of this strip from Membery. But whether that is so or not, the vendors have not the title to it. It is argued that Membery would be estopped from setting up title to it—it may be so, I hope so—but that is not the great danger. A man who after agreeing to give up a building supposed to be 25 feet frontage, exacts $10 for three-quarters of an inch extra, which the building really measured; and then when it is found that the rear encroaches an inch or two more will not convey this trifling strip unless he is paid another sum of money, may reasonably be expected to take every advantage of his legal position. An "innocent purchaser" could, no doubt, be found to buy the westerly 24 feet ¼ inches of the lot; he could rely upon the Registry Act, and might very well set up that the second deed of three-quarters of an inch misled him, for ordinary prudence would have called for a perfectly correct deed at that time. When people get down to a deed for three-quarters of an inch, the strong presumption is that they are very accurate indeed. No doubt possession would be taken of the shop; but, as was long ago decided, possession is not in itself notice (*Waters* v. *Shade* (1851), 2 Gr. 457, and *Sherboneau* v. *Jeffs* (1869), 15 Gr. 574), even if the second grantee knows it in some instances at least. *Roe* v. *Braden* (1877), 24 Gr. 559.

At all events the "innocent purchaser" would take care not to know anything about the possession.

I do not think that the deeds are sufficient to convey all the land covered by the building and that this requisition has not been answered.

While it is very seldom that litigation is advised by the Court, this seems to be a case for an action against Membery to carry out his agreement for settlement.