

Case for the Opinion of Counsel on whether the covenants in the deed on the house in Scarborough preclude purchase by the Retreat for its use

Publication/Creation

1882

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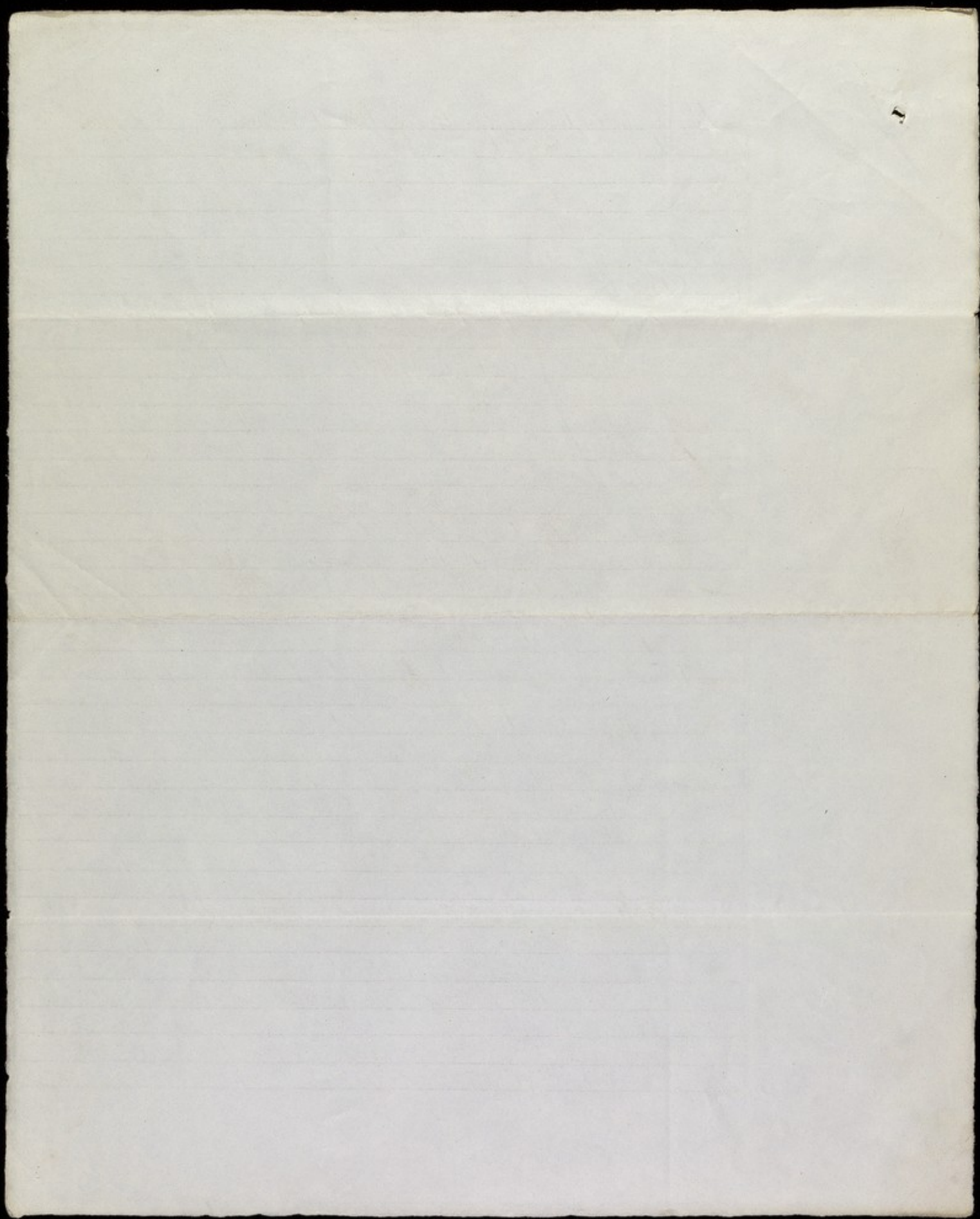
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By an Indenture dated the 5th May 1879 and made between John Woodall Woodall Charles Woodall Woodall and Edward Hibden Woodall all of Scarborough in the County of York Gentlemen of the one part and William Jersey of the same place Builder of the other part a parcel of land was sold to the said William Jersey for building purposes subject to the certain restrictions covenanted to be observed as follows viz

And the said William Jersey doth hereby for himself his heirs and assigns covenant with the said John Woodall Woodall E W Woodall and E H Woodall their heirs executors administrators and assigns in manner following that is to say that he the said W^m Jersey his heirs or assigns shall not at any time hereafter place or erect or cause to be placed or erected any buildings or other erections other than and except fences walls and division fences on any part of the said piece or parcel of ground expressed to be hereby granted between the building line shown on the said plan drawn in the margin hereof and the said roads 50 feet wide respectively on the Western and Southern boundaries of the said piece or parcel of ground and that no building now erected on which may hereafter be erected on the said piece or parcel of ground shall be used as an Hotel Public House Beerhouse Shop or for any trade or business whatsoever save that the same may be let as furnished lodgings or a private school and except also as to the part coloured pink on the said plan on which stables Coachhouses and Coachman's house may be erected And that he the said William Jersey his heirs and assigns shall before erecting any building on the said piece or parcel of ground submit a plan thereof showing the elevation thereof and also if required the construction and course of drains to the said E W Woodall E H Woodall and E H Woodall their heirs and assigns and obtain their consent thereto previous to commencing the same And also that all buildings to be erected on the said piece or parcel of ground shall be faced on all sides with good pressed bricks or with stone or partly with pressed bricks and partly with stone and the boundary walls shall be built of the same material and faced with pitched faced wall stones capped with stone and capped with an iron palisading the total height of which shall not exceed as to the front walls four feet six inches from the general level of the ground And as to the back walls an average of six feet in height from the present level of the ground and shall all be built level and stepped And that no houses of less value

The House has been erected according
to plans consented to by Mess^{rs} Woodall
A. Hick



than £600 shall be erected on that portion of the said piece or parcel of land as is coloured Blue on the said plan And lastly that no clothes shall be placed to dry in any of the front gardens of the dwellinghouses now or hereafter to be erected on the said piece or parcel of ground nor any trees or shrubs allowed to grow therein above the height of 10 feet above the level of the ground unless trained against the front walls of any such dwellinghouse

The said William Bourcy has built a house on the said land and the Committee of the York Retreat for the Insane are desirous of purchasing the House. They would place a lady in charge and send patients who require but little attention and restraint for the benefit of the sea side air. At present they do so every year having an ordinary Lodging House for the purpose. They would also wish to keep one or two patients of the same class as Boarders. It should be said that the York Retreat ranks as a Hospital and is carried on for benevolent not for business purposes. The House if purchased would not have to be licensed to receive patients as proposed

Counsel will please advise whether

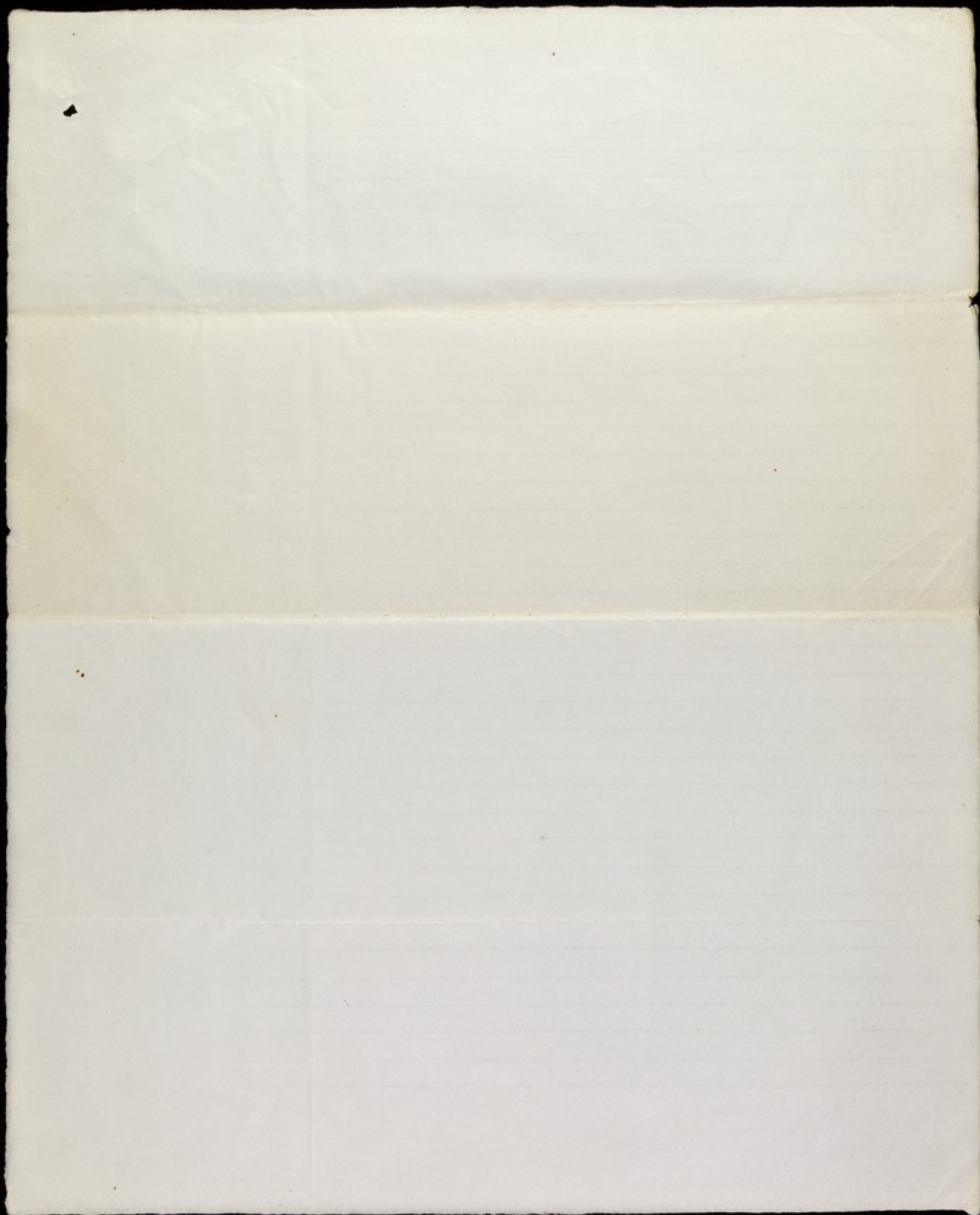
- 1st Whether the covenant set forth in the Deed preclude the use of the House if purchased as proposed
- 2^d Generally on the Case

Opinion

1. I am strongly inclined to think, that the proposed use of the house would be an infringement of the Covenant. It is immaterial, whether the business ^{is} carried on for the purposes of profit; but if some of the Hospital patients make any payment whatever (as to which there is no statement in the case) it might be considered open to doubt, whether the more users of the house in order to give the benefit of its change of air to the ordinary patients would come within the terms of the Covenant - I think however that the admission of Lunatics as Boarders would be clearly within it (See Bramwell v Lacy 10 Ch D 697) The Case of Doe d. Withers v Bird 2 Ad & Ell. 161 was decided upon the meaning of the word "Trade" in the particular

(see back)

Government as distinguished from business
2. Even if the proposal as Mr. Boardman
dropped, I think there is no need doubt upon the
subject, that I should not advise the Committee to
the risk attend the consent of the Government
A. S. Pillsbury
Secretary
20th June 1882





~~Re. Professor P. Sawyer.~~

Case for Councils
Opinion

for Editor
Boston, 5. June
1841
1841

Opinion on case

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Opinion on case

1841

TORR, JANEWAY, CRIBBLE & GODDIE
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Printings of Rowthorn
Dear Sir