

HOCKEN LIBRARY DEED OF TRUST

2 September 1907

THIS DEED is made the second day of September One thousand nine hundred and seven BETWEEN THOMAS MORLAND HOCKEN of Dunedin in the Provincial District of Otago in the Colony of New Zealand Surgeon of the first part JOHN ROBERTS C.M.G. of Dunedin aforesaid Merchant and MARK COHEN of the same place Journalist JOSEPH ELI WHITE of the same place Building Contractor and WILLIAM BURNETT of the same place Sheepfarmer GEORGE FENWICK of the same place Journalist and HENRY EDWARD WILLIAMS of the same place Insurance Agent and JOHN ROSS of the same place Importer and WILLIAM BLAXLAND BENHAM of the same place Professor of Biology in the University of Otago (who when hereinafter collectively referred to are designated "The Trustees") of the second part and THE UNIVERSITY of OTAGO of the third part

WHEREAS the said Thomas Morland Hocken lately offered his collection of books manuscripts newspapers and other documents and his pictures prints photographs drawings and other articles and objects of a similar character in relation to the early history of the Colony of New Zealand and of the Australian Colonies as a gift to the public of the said Colony of New Zealand upon condition that proper provision was made for appropriately housing the said Collection in Dunedin aforesaid and for the future care custody and preservation thereof so that the said Collection should be available at all times for inspection reference and use by the general public and should be maintained in good order and condition

AND WHEREAS an appeal was thereupon made to the public to provide the funds necessary for the erection of a suitable building for housing the said collection and for making provision for the future care preservation and maintenance thereof and a total sum of £5553/8/- was collected for these purposes of which the sum of £2576/14/- was subscribed by the public the sum of £200 was donated by The Corporation of The Mayor Councillors and Citizens of the City of Dunedin and the sum of £2776/14/- was provided by The General Government as a subsidy at the rate of pound (£) for pound (£) on the amounts so raised by the subscribers and donated by the said Corporation

AND WHEREAS the following Trustees of the moneys so raised donated and subsidised (which said moneys are hereinafter designated "the said Fund") were appointed namely the said John Roberts and Mark Cohen by the General body of subscribers thereto the said Joseph Eli White and William Burnett by the said Corporation the said George Fenwick and Henry Edward Williams by the said Thomas Morland Hocken and the said John Ross and William Blaxland Benham by the General Government

AND WHEREAS Meetings of the Subscribers to the said Fund were held from time to time to discuss the question of the site for the erection of the building for housing the said Collection and other matters connected with the care maintenance and management thereof and ultimately it was decided at a meeting of the general body of subscribers to the said Fund held in Dunedin aforesaid on the eighteenth day of September One thousand nine hundred and six that the said Collection should be housed in a Building to be erected on the Otago University Museum Reserve and at a subsequent meeting held on the twenty seventh day of March One thousand nine hundred and seven it was resolved that the Trustees should apply to The Council of The Otago University to take over the care custody and management of the said Collection

AND WHEREAS The Trustees have with the concurrence of the said Thomas Morland Hocken and with the approval and sanction of the said Corporation and of The General Government arranged with the said Council that the said Collection shall be placed under the care and management of the said Council and shall be housed in a suitable Building in the nature of a wing or addition to the said Museum to be erected out of the said Fund so far as the same will extend and that the said Collection shall be held by the said Council upon the trusts and subject to the provisions hereinafter expressed.

NOW THESE PRESENTS WITNESS and IT IS HEREBY AGREED AND DECLARED by and between the parties here to as follows:-

1. THE said Fund shall be applied by The Trustees so far as it will extend under the direction of the said Council in the erection of a Building as a wing or addition to the said Museum and a sufficient space on the (T.M.H.) second (T.M.H.) floor thereof shall be set aside and permanently and exclusively allotted to the suitable housing of the said Collection and proper and suitable cases and furnishings shall be provided out of the said Fund for the display of the said Collection for safeguarding and keeping under lock and key such portions thereof as may be particularly valuable and for the inspection reference and use thereof by the general public.

2. AS soon as the said Building is completed and ready to receive the said Collection the said Thomas Morland Hocken shall hand over to the said Council All the books manuscripts newspapers and other documents and all the pictures prints photographs drawings and other articles and objects of a similar character in relation to the early history of the Colony of New Zealand and of The Australian Colonies now constituting the Collection known as "The Hocken Collection" and the said Council shall stand possessed of the said Collection IN TRUST to permit the same to be used as a Library or Museum of information and reference by the general public of The Colony of New Zealand in perpetuity under and subject to the conditions and provisions hereinafter expressed.

3. THE said Collection shall always be known n as "The Hocken Collection" and shall be permanently housed in the apartment or apartments to be exclusively allotted thereto on the (T.M.H.) second (T.M.H.) floor of the Building to be so as aforesaid erected out of the said Fund as an addition to the said Museum.

4. THE said Collection shall be forthwith catalogued and arranged so as to be readily available for reference and use by the general public.
5. THE said Collection shall be under the absolute management and entire control of the said Council but shall be open to the general public at all times and at all hours during which the said Museum is open without any fee or charge subject to the regulations for the time being in force under the next succeeding clause hereof.
6. HE said Council may make rescind and alter regulations (not being inconsistent with these presents) as it may think fit with respect to the purposes for which the manner in which the persons by whom and the times when the said Collection shall be used.
7. THE said Council may add to the said Collection any books manuscripts or other documents or any pictures prints photographs or other articles of a similar character in relation to the early history of the said Colony of New Zealand or of the Maori Race or of the Australian Colonies generally or in particular which may be donated or otherwise acquired by the said Council.
8. THE said Council shall make suitable provision for the care preservation and maintenance in good order and condition of the various books manuscripts papers pictures prints photographs drawings and other articles and objects constituting the said Collection and shall from time to time have the bindings of such of the said books manuscripts and papers as shall have deteriorated or perished repaired or renewed The said Council shall also keep the said Collection insured against loss or damage by fire in such sum as the said Council may consider reasonably sufficient.
9. THE said Council shall not under any circumstances whatsoever permit or allow any book manuscript newspaper or other article belonging to the said Collection to be removed from the Building in which the said Collection shall be housed and the said Council shall make sufficient provision for safe guarding the documents and other articles belonging to the said Collection from removal defacement or injury .
10. THE subscribers to the said Fund The said Corporation and the General Government shall each be entitled to nominate and appoint one Visitor for the purpose of inspecting the said Collection from time to time and the Building in which the same shall be housed and of reporting to the said Council on the condition and management of the said Collection and on the state of repair of the said Building and of the furnishings therein and the said Council shall as far as possible carry out and give effect to any recommendations of the said Visitors in reference to the management of the said Collection and to the maintenance of any of the articles belonging thereto and to the repair of the said Building and the furnishings thereof.

11. THE first Visitor to be appointed by the subscribers shall be appointed by a majority at a special meeting of the subscribers to be called by the Trustees for the purpose by an advertisement to be inserted twice within the space of one week in some or one of the daily newspapers circulating in Dunedin aforesaid and thereafter the Visitor to be appointed by the subscribers shall be appointed at a special meeting to be called by the said Council by similar advertisement. If any such meeting shall be called by the said Council and no subscribers shall attend it shall not be incumbent upon the said Council to call another meeting until requested in writing to do so by at least five subscribers.

12. THE appointment of all Visitors shall extend over a period of five years from the date when the same shall be made and notice in writing of any such appointment shall be given to the said Council by the Chairman of the meeting at which the same shall be made or by some responsible officer of the said Corporation or of The General Government as the case may require.

13. THE plans of the building to be erected for the housing of the said Collection and drawings and particulars of the cases and furnishings for the display and safeguarding of the said Collection shall be submitted to the said Thomas Morland Hocken before any portion of the said Fund shall be expended thereon and the said Thomas Morland Hocken shall be entitled during his life to act as an additional Visitor with the other Visitors to be appointed as hereinbefore directed.

IN WITNESS whereof these presents have been executed by or on behalf of the parties hereto the day and year first above written.

SIGNED SEALED AND DELIVERED by the abovenamed
Thomas Morland Hocken in the presence of:-

[T.M. Hocken]

John A. Cook, Solicitor, Dunedin.

SIGNED SEALED AND DELIVERED by the abovenamed
John Roberts in the presence of:-

[John Roberts]

A. Sinclair, Solicitor, Dunedin.

SIGNED SEALED AND DELIVERED by the abovenamed
Mark Cohen in the presence of:-

[Mark Cohen]

A. Sinclair, Solicitor, Dunedin.

SIGNED SEALED AND DELIVERED by the above named
Joseph Eli White in the presence of:-

[Joseph Eli White]

A. Sinclair, Solicitor, Dunedin .

SIGNED SEALED AND DELIVERED by the above named
William Burnett in the presence of:-

[William Burnett]

A. Sinclair, Solicitor, Dunedin.

SIGNED SEALED AND DELIVERED by the abovenamed)
George Fenwick in the presence of:-

[George Fenwick]

A. Sinclair, Solicitor, Dunedin

SIGNED SEALED AND DELIVERED by the abovenamed)
John Ross in the presence of:-

[John Ross]

A. Sinclair, Solicitor, Dunedin

THE COMMON SEAL of the University of Otago was hereunto affixed at a duly constituted
meeting _of and by order of the Council thereof in the presence of:

John Shand
Andrew Cameron
William Hewitson
Robert Church
G.S. Sale

SIGNED SEALED AND DELIVERED by the
abovenamed William Blaxland Benham
in the presence of:-

[Wm. Blaxland Benham]

A. Sinclair, Solicitor, Dunedin.

IN THE SUPREME COURT OF NEW ZEALAND
OTAGO AND SOUTHLAND DISTRICT
No.M 20/66
DUNEDIN REGISTRY

IN THE MATTER of "the Charitable Trusts

Act, 1957"

AND

IN THE MATTER of "the Judicature Act,

1908"

AND

IN THE MATTER of a certain Trust Deed
bearing date the 2nd day of
September 1907 relating to
The Hocken Collection

MONDAY THE 30TH DAY OF MAY 1966
BEFORE THE HONOURABLE MR. JUSTICE HENRY

UPON READING the Notice of Motion of the University of Otago dated the 20th day of April 1966 and the Report of the Honourable the Attorney-General and the Statement of Facts Submissions and Scheme prepared by the University of Otago pursuant to the Provisions of Section 34 of the Charitable Trusts Act 1957 in support of the said Motion and the Affidavits of John Waddell Hayward Walter John McEldowney William Parker Morrell Charles Orwell Brasch and John Irvine Brent filed herein AND UPON HEARING Mr. J. C. Robertson of Counsel on behalf of the University of Otago this Court HEREBY ORDERS that the Report of the Honourable the Attorney-General be and the same is hereby adopted AND HEREBY FURTHER ORDERS that the Scheme submitted bearing date the 16th day of March 1966 (a copy of which is annexed hereto) be and the same is hereby approved.

By the Court

D. Jenkin
DEPUTY REGISTRAR

IN THE SUPREME COURT OF NEW ZEALAND
OTAGO AND SOUTHLAND DISTRICT
No.M 20/66
DUNEDIN REGISTRY

IN THE MATTER of "the Charitable Trusts Act, 1957"

AND IN THE MATTER of "the Judicature Act, 1908"

AND IN THE MATTER of a certain Trust Deed
bearing date the 2nd day of September 1907 relating to
The Hocken Collection

SCHEME PREPARED PURSUANT TO SECTION 34 OF THE
CHARITABLE TRUSTS ACT 1957 BY THE UNIVERSITY OF OTAGO

Subject to the approval of this Honourable Court the Trust Deed bearing date the 2nd day of September 1907 and made between Thomas Morland Hocken of Dunedin Surgeon of the first part John Roberts C.M.G. Merchant Mark Cohen Journalist Joseph Eli White Building Contractor William Burnett Sheepfarmer George Fenwick Journalist Henry Edward Williams Insurance Agent John Ross Importer and William Blaxland Benham Professor of Biology all of Dunedin of the second part and the University of Otago (hereinafter called "the University") shall be varied as follows:

1. The University may remove the Hocken Collection and any addition thereof from the Building erected pursuant to the said Trust Deed as a wing or addition to the Otago Museum (hereinafter called "the said Building") and may house the Collection or any part or parts thereof in such suitable building or buildings under the control of the University as the Council of the University (hereinafter called "the Council") shall from time to time think fit provided however that the items of the original Hocken Collection donated by the said Thomas Morland Hocken shall always be housed together in one building.

2. If at any time the University shall cease to use the said Building for or in connection with the Collection the said Building shall be freed from the trusts in respect thereof set out in the said Trust Deed and shall be and remain the property of the Otago Museum Trust Board.

3. Notwithstanding that parts of the said Collection may be housed in separate buildings all parts thereof and all additions thereto shall be held and controlled by the University as one collection under the name of the Hocken Collection.

4. All parts of the said Collection wherever they may be housed shall be open to the general public without fee or charge subject to the regulations for the time being in force made pursuant to the said Trust Deed. The times and hours during which the Collection shall be open shall be fixed by regulation but shall be approximately the same as the hours during which the University Library is open.

5. In addition to the powers given to the Council by the said Trust Deed and notwithstanding any restrictions therein contained the Council may exercise all or any of the following powers:-

(a) Notwithstanding that the original intention of the Trust was that the Collection should be kept together for inspection reference and use by the general public to permit any item forming part of the Collection to leave the building in which it is for the time being housed on short term loan to such libraries museums art galleries and other institutions in New Zealand as the Council thinks fit for the purpose of inspection reference or display

PROVIDED HOWEVER that the Council is satisfied that all necessary steps will be taken to ensure that any such item will be suitably housed guarded and cared for and will not go out of the custody of the library museum art gallery or other institution to which it is on loan AND PROVIDED FURTHER that no item of the Collection shall be permitted to leave the building in which it is for the time being housed on loan to an individual person.

(b) To receive on loan suitable items from other collections libraries museums art galleries and institutions and to display the same with items of the Collection or use the same for inspection and reference in conjunction with items of the Collection.

(c) To permit any item to leave the building in which is for the time being housed for the purpose of photographing or other form of copying or for the purpose of cleaning or repair. All photographs or copies of items of the Collection shall be the property of the University and shall be used or disposed of as the Council thinks fit.

(d) To sell exchange or otherwise dispose of any item of the Collection of which there is a duplicate in the Collection except the items of the original Hocken Collection donated by the said Thomas Morland Hocken.

DATED this 16th day of March 1966.

THE COMMON SEAL of THE UNIVERSITY OF
OTAGO was hereunto affixed by order of the
Council thereof in the presence of:-

T.K.S. Sidey

C.V. Smith

Members of Council