

When Mrs. Patrick made the deed to Henderson, the latter obtained only a right of way over Ancroft Place or Rachel street, as it was then called. The reference to it in the conveyances to Henderson and Elwood as a street or road have no conclusive significance, as in each case they are in the deed shewn to have been associated with a right of way over the land, which was all the owner of it was yielding up to the grantee. Mr. Henderson testified that when he obtained his deed, there was a definite understanding between Mrs. Patrick and himself, that Rachel street was to be a private street or road, and to be kept and continued as such. He also said that after he purchased he had given instructions to his gardner to keep up the fences on the north side of Rachel street, to prevent user or trespass with respect to the said street or lane. It is true that in his deed he was by Mrs. Patrick given a right to make Rachel street (Ancroft Place) a public street, by the registration after one year of a plan in the preparation of which he could use her name. Such a plan would, of course, before it could be registered be required to be prepared with the formalities and in the manner provided by the Registry Act. He registered his deed on the 16th August, 1884. Its registration with the sketch attached could not and did not accomplish this. In the deed to Henderson, Mrs. Patrick reserved to herself the right to make a plan of the land then owned by her lying to the north of Rachel street, and now owned by defendant, and agreed that if she did she would shew said street on it—she could thereafter have made it a street if she had desired to do so—she never subsequently made or registered a plan shewing it as a street, private or public. In her subsequent deed to Helen E. McCulley of the land which was later acquired by the defendant, she made no reference to Rachel street in any way, and gave no right of way over it. Under these circumstances she still owned the fee in Ancroft Place subject to the rights of way which she had granted. I think the reference in the deed to Henderson “in common with said Rachel Patrick, her heirs and assigns, and the persons to whom she or her said late husband has already or may hereafter grant any part of said lot 22 abutting on said street,” must be construed to mean abutting on said street, and to whom she would grant such right of way.

The defendant and his predecessors in title are not in that position, nor parties in any way to that deed, nor entitled to take advantage of it. Subsequent to her deed to Hend-