

scribed district, and was not wider than was necessary for the reasonable protection of the plaintiff, for that selling wholesale and retail are not two distinct businesses, but only two distinct modes of carrying on the same business. They, however, agreed with Stirling, J., that the stipulation as to aerated waters, etc., was severable.

SPECIFIC PERFORMANCE—POWER OF ATTORNEY—CONTRACT FOR SALE OF BUSINESS UNDER POWER OF ATTORNEY—WAIVER OF DOUBTFUL TERMS OF CONTRACT BY PURCHASER.

*Hawksley v. Outram* (1892), 3 Ch. 359, was an action by a purchaser to enforce the specific performance of a contract for the sale of a partnership business as a going concern. The contract had been entered into on behalf of one of the vendors by his attorney acting under a power. The action was resisted on the ground that some of the terms of the contract were unauthorized by the power of attorney. The contract was made under the following circumstances: The business agreed to be sold was carried on by the defendants in partnership. The firm was in embarrassed circumstances; one of the partners was in America. By a power of attorney, in general terms, the absent partner authorized one of his co-partners to sell his interest in the business. The contract in question was made for the sale of the business to the defendant. The property sold was valued at £20,000; the debts of the defendant firm were estimated to amount to £15,000. The contract, among other things, provided that the plaintiff should pay the defendants' debts, and that if they did not exceed £15,000 the defendants were to be entitled to £5,000 "deferred capital," on which they were to get interest on certain specified conditions. If the debts exceeded £15,000, the "deferred capital" to which the defendants were entitled was to be reduced, and the defendants were to be entitled to call on the plaintiff to take over the "deferred capital" to which they were entitled, at a sum equal to two-fifths of its nominal amount; and if the concern was converted into a joint stock company, the defendants were to receive shares for their "deferred capital"; and if the debts were less than £15,000, the plaintiff was to pay the difference in cash at the end of two years. The contract also contained the stipulations (1) that plaintiff might use the defendants' name in carrying on the business; and (2) that the defend-