

Merrimack, }
 June, 1898. }

STATE v. POWELL.

A trader who has a permanent business within this state, a part of which is carried on temporarily in a place other than its usual location, is not an itinerant vendor within the meaning of c. 46, Laws 1897.

INDICTMENT, for selling merchandise as an itinerant vendor, without a license. Plea, not guilty. Facts agreed.

The respondent is a member of the firm of Kimball, Corser & Powell, doing business and taxed in Concord, where all the partners reside. In September, 1897, the respondent, acting for the firm, carried a portion of the partnership goods to Warner, and sold some of them during the two days of the Grange fair.

If upon these facts the prosecution cannot be sustained, the respondent is to be discharged.

George M. Fletcher, solicitor, for the state.

Streeter, Walker & Hollis, for the defendant.

PEASLEE, J. The words "itinerant vendor," as defined in s. 1, c. 46, Laws 1897, include only those persons who "engage in a temporary or transient business in this state." They do not include those whose business in the state is permanent, even when such persons carry on a part of their business temporarily in a place apart from their usual location. Section 12 of the act provides that the deposit with the secretary of state shall be held subject to claims growing out of the licensee's business in this state. This shows that the law was intended to apply to the non-resident dealer, who does business here temporarily and then leaves without paying his creditors.

The firm of which the respondent is a member has a permanent place of business in Concord, and is taxable there each year upon the average value of its stock in trade during the year. P. S., c. 55, s. 7, *par.* VI. It has not heretofore been the policy of the state to make this class of laws applicable to such persons. Laws 1878, c. 27; G. L., c. 119; Laws 1887, c. 68. Their location is of such a character and permanency that special protection for persons dealing with them is not required, and by ordinary taxation they bear their just share of the expense of local government.

Respondent discharged.

All concurred.