

THE  
**AMERICAN STATE REPORTS,**

CONTAINING THE

CASES OF GENERAL VALUE AND AUTHORITY

SUBSEQUENT TO THOSE CONTAINED IN THE "AMERICAN  
DECISIONS" AND THE "AMERICAN REPORTS,"

DECIDED IN THE

COURTS OF LAST RESORT

OF THE SEVERAL STATES.

SELECTED, REPORTED, AND ANNOTATED

By A. C. FREEMAN.

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VOLUME 101.

SAN FRANCISCO:  
BANCROFT-WHITNEY COMPANY,  
LAW PUBLISHERS AND LAW BOOKSELLERS.  
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363, 25 N. E. 1010; Beech  
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IN RE BRICKEY.

[8 Idaho, 597, 70 Pac. 609.]

**CONSTITUTIONAL LAW—Carrying Deadly Weapons.**—A statute prohibiting private persons from carrying deadly weapons within the limits of any city, town, or village in the state, is unconstitutional and void. (pp. 215, 216.)

**CONSTITUTIONAL LAW—Carrying Deadly Weapons.**—A statute prohibiting the carrying of concealed deadly weapons is a proper exercise of the police power, and is valid, but a statute prohibiting the mere carrying of firearms is void, as the right to do so is guaranteed by the state and national constitutions. (p. 216.)

S. S. Denning, for the petitioner.

M. S. Johnson, county attorney, for the state.

**see QUARLES, C. J.** The petitioner applies to this court for a writ of habeas corpus, and in the petition sets forth and shows that he is unlawfully imprisoned confined, and restrained of his liberty by A. W. Krouting, sheriff of Nez Perces county, at the county jail in the county of Nez Perces, in the state of Idaho; that he is so imprisoned under a commitment which issued out of the justice's court of West Lewiston precinct, in the county of Nez Perces, in a criminal action wherein petitioner was convicted upon the charge of carrying a deadly weapon, to wit, a loaded revolver, within the limits and confines of the city of Lewiston, contrary to the provisions of the act of the territory of Idaho approved February 4, 1889 (Sess. Laws 1889, p. 27); and, in accordance with the prayer of said petition, the writ was issued, and return thereto duly made by the said sheriff. From the petition and return it appears that the only offense charged against the petitioner, of which he has been convicted, and is now restrained of his liberty, is that he carried a deadly weapon within the limits of the city of Lewiston, in contravention of the said act of February 4, 1889. The second amendment to the federal constitution is in the following language: "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." The language of section 11, article 1 of the constitution of Idaho is as follows: "The people have the right to bear arms for their security and defense, but the legislature shall regulate the exercise of this right of law." Under these constitutional provisions, the legislature has no power to prohibit a citizen from bearing

arms in any portion of the state of Idaho, whether within or without the corporate limits of cities, towns, and villages. The legislature may, as expressly provided in our state constitution, regulate the exercise of this right, but may not prohibit it. A statute prohibiting the carrying of concealed deadly weapons would be a proper exercise of the police power of the state. But the statute in question does not prohibit the carrying of weapons concealed, which is of itself a pernicious practice, but prohibits the carrying of them in any manner in cities, towns, and villages. We are compelled to hold this statute void. The statute being void, the said justice's court had no jurisdiction of the subject matter of the action, and the said judgment of conviction, and the commitment which issued thereon, and the detention of the petitioner under said commitment and judgment of conviction, are illegal and void.

The said judgment being void, habeas corpus will lie, and the prisoner should be discharged from custody, and it is so ordered.

Sullivan, and Stockelager, JJ., concur.

*The Carrying of Concealed weapons may be regulated and prohibited by legislative authority: See State v. Smith, 157 Ind. 241, 87 Am. St. Rep. 205, 61 N. E. 506; Dunstan v. State, 124 Ala. 89, 82 Am. St. Rep. 152, 27 South. 333; Van Buren v. Wells, 53 Ark. 368, 22 Am. St. Rep. 214, 14 S. W. 38; notes to Bliss v. Commonwealth, 18 Am. Dec. 255; Fife v. State, 25 Am. Rep. 561-563. The arms which the constitution guarantees citizens the right to keep and bear are such as are needful to and ordinarily used by a well-regulated militia, and such as are suitable to enable a free people to resist oppression, prevent usurpation, repel invasion, and the like: Fife v. State, 31 Ark. 455, 25 Am. Rep. 556.*