AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 5: The Jacksonian Era—Individual Rights/Property/Due Process

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**Wally's Heirs v. Kennedy, 10 Tenn. 554** (1831)

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*The heirs of Wally filed a lawsuit claiming land occupied by Nancy Kennedy. Wally's heirs claimed that they had title to the land by virtue of treaties made with the Cherokees in 1817 and 1819. In 1827, the Tennessee legislature passed a statute directing courts to dismiss any lawsuit brought by persons who claimed title to land under the 1817 and 1819 treaties with the Cherokees, if the lawsuit was brought "in trust for another." Plaintiffs acting "in trust for another" were permitted to bring lawsuits, as long as the original title to the land did not belong to Native American tribes. The trial judge instructed the jury that they should find for Kennedy if they concluded that Wally's heirs had previously sold their interest in the disputed land. The jury found for Kennedy. Wally's heirs appealed that verdict to the Supreme Court of Errors and Appeals of Tennessee.*

*The state Supreme Court reversed the trial court. Justice John Catron's opinion held that the statute was not a "general public law, equally binding upon every member of the community."* Wally's Heirs *expressed the conventional view in Jacksonian America that the due process clause forbade legislation that arbitrarily singled out an individual or group of individuals for special burdens or penalties. In this case, the group was persons claiming land under treaties with Native Americans. Many courts before the Civil War looked with disfavor on such "special," "partial," or "class" legislation.[1] Why did Judge Catron treat the Tennessee law as class legislation? What is the best justification for the Tennessee decision to treat differently legal claims based on treaties with Native Americans from other legal claims? Do you believe those reasons are constitutionally sufficient to justify the Tennessee law?*

JUDGE CATRON writing for the Court.

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Does that part of the act of 1827, which declares that the suit shall be barred, if the defendant prove it was prosecuted in trust for another, violate the constitution? By this it is declared, that no free man shall be . . . deprived of his property, but by the judgment of his peers or the law of the land. What is "the law of the land?" This court on two occasions, and upon the most mature consideration, has declared the clause, "law of the land," means a general public law, equally binding upon every member of the community. The rights of every individual must stand or fall by the same rule or law, that governs every other member of the body politic, or land, under similar circumstances; and every partial, or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, the mass of the community, and those who made the law, by another; whereas a like general law affecting the whole community equally could not have been passed. . . .

The act of 1827 is peculiarly partial. It is limited in its operation to a comparatively small section of the State, and to a very few individuals claiming a very small portion of the section of country referred to.

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[1] See Howard Gillman, *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence* (Durham, NC: Duke University Press, 1993).

. . . The act was intended to drive from the courts of justice a few odious individuals, who it was supposed had speculated upon the ignorance and necessities of the Indian reservees, and fraudulently obtained their claims for trifling considerations, and were corruptly obtaining evidence to establish rights to reserves, where the Indians in fact never had any, to the prejudice of the purchasers from the State. If the supposed facts did exist, there was good cause for public indignation, but none for a violation of the constitution by the passage of a law affecting the rights of a few individuals, but by which the great body of the people, or the legislators themselves, were unwilling to be bound. The part of the constitution referred to, was intended to secure to weak and unpopular minorities and individuals, equal rights with the majority, who from the nature of our government exercise the legislative power. Any other construction of the constitution would set up the majority in the government as a many headed tyrant, with capacity and power to oppress the minority at pleasure, by odious laws binding on the latter. The part of the act of 1827 above referred to, is unconstitutional and void. . . .

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