

# **Richard Fitzpatrick's South Florida, 1822-1840**

## **Part I: Key West Phase**

By Hugo L. Black, III\*

### **Introduction**

By Dr. Charlton W. Tebeau

Richard Fitzpatrick was an important figure in the first two decades of the American period in South Florida. Aside from the prominent role he played in the economic and political life of the region, he represented a class of southerner more closely associated with the life of middle Florida in the territorial period. He came from the planter class in South Carolina, brought slaves with him, and sought to impose the plantation system with all of its caste and class system on the region. That he failed is due partly to the sparse population and underdeveloped character of the society in these early days. It is perhaps due even more to the unsuitability of South Florida climate and soil for any of the plantation crops, cotton, rice, tobacco and sugar cane. Key West is better understood as a cosmopolitan, even international island of economic, social and cultural activity, unlike any other in Florida, and having little contact with it. He did attempt to establish the plantation system on the Miami River, but neither he nor

---

\*Hugo Black, III is a resident of Miami, a former state legislator, a graduate of Yale, and presently attending law school at Stanford University. This article was written as a senior paper at Yale.

anyone after him there succeeded in the effort to adopt it to the natural conditions of the region. Cane growing and sugar making were not really tried until the 1920s and by that time the plantation system had ceased to be of importance in Florida. Cotton growing never recovered its earlier importance in Florida after the Civil War. One cannot generalize on the basis of such a limited society and experience, but it is highly interesting that this one man, in some ways an outcast from that society, but brought up in it, brought the plantation concept to South Florida and sought to establish it there. Though he did not succeed financially, it did determine his attitude on questions of the day. His 1831 letter quoted here reveals his expectations. This narrative account of his experiences gives us an interesting picture of early South Florida at the same time.

This Country (South Florida) has heretofore been considered as of no value, but a single look at the map is sufficient to convince any intelligent man that the difference of Latitude (and consequently of the climate) must, if there are good lands to be found there place them beyond the value of any in the United States. I have seen more of the country than any white man in Florida, one other excepted, and being brought up a planter in South Carolina it is natural to suppose I must know something of the quality of land and its fitness for cultivation. You will no doubt be surprised when I state to you this fact that the Lime and Banana trees grow here in the greatest perfection as well as the sugar cane which is never injured by frost and grows from year to year until cut. I have never seen better in the West Indies or South America . . . If this country is surveyed and brought into the market it would be bought up with avidity and in a few years what is now a wilderness will be turned into the finest sugar, cotton, and rice plantations in the Union.!

Richard Fitzpatrick

## **South Carolina Background**

Born in 1792<sup>1</sup> in Columbia, South Carolina,<sup>2</sup> Richard Fitzpatrick was, in his own words, “brought up a planter.” His father was William Fitzpatrick, one of the leading members of the planter class in the Columbia area. William Fitzpatrick served as a Captain in the Revolutionary War,<sup>3</sup> and was a member of the General Assembly of South Carolina from 1787-1794, and again in 1798-1799.<sup>4</sup> A wealthy cotton planter, at his death in 1808 William’s estate was worth over \$80,000. Included were sixty-six slaves, his main plantation known as Bell Hall, and another separate tract of land including a mansion and over ten thousand acres.<sup>5</sup>

In contrast to his economic and political success, William’s family life was a disaster. Sometime soon after Richard’s birth, William Fitzpatrick and his wife Elizabeth Lenon Fitzpatrick separated. Thereafter, the two battled each other in the courts over Elizabeth Lenon Fitzpatrick’s claim for compensatory damages after William left her. Though William and Elizabeth never divorced, the Court of Equity did award Mrs. Fitzpatrick the sum of sixty pounds sterling to be paid her yearly for the rest of her life. By 1798, William Fitzpatrick had taken a mistress, Elizabeth Gillespie, with whom he moved away from Bell Hall to his other tract of land.<sup>6</sup>

William Fitzpatrick’s union with Elizabeth Gillespie must have been quite scandalous, for not only was William still legally married, court papers at the time said that “(William) Fitzpatrick was an old and ugly man and . . . Miss Gillespie was young and very handsome,” a woman of “good moral character . . . previous to her acquaintance with Fitzpatrick,” who “had lost her good character by the visits of said Fitzpatrick.”<sup>7</sup> Soon after William began living with Elizabeth Gillespie, they had a son whom they named William Gillespie Fitzpatrick. William’s mistress and bastard son made it impossible for him to run for another term in the South Carolina General Assembly; he served his last legislative term in the 13th General Assembly of 1798-99, not coincidentally the first two years of his relationship with Elizabeth Gillespie. Columbia society must have made William Fitzpatrick and his whole family, including Richard and Richard’s older sister, Harriet, into social pariahs because of William’s illicit relationship with Elizabeth Gillespie. The Fitzpatrick family, for example, does not show up on the church lists of the time, including the First Presbyterian Church where Harriet later was buried.

After William began his association with Elizabeth Gillespie, he tried to arrange his affairs so that both Elizabeth Gillespie and William

Gillespie Fitzpatrick would inherit most of the Fitzpatrick property. A South Carolina law prohibited mistresses and their bastard children from inheriting more than one-quarter of the testator's estate. Through a complicated arrangement of gifts and third-party purchases, however, William tried to circumvent the law. Although William did not try to cut his natural children completely out of his will,<sup>8</sup> we can only speculate that Richard's and Harriet's affection for their father must have dwindled as they saw him trying to give away what the law said should belong to them, and as Richard was dropped in a second will from being named one of William's executors. At the very least, Richard's ties to his family in South Carolina must have been somewhat more tenuous than was common among planter families of the day.

In 1808, William went mad, and in April of 1808 a Declaration of Lunacy was declared by the Court and the administration of William's business affairs was taken over by his son-in-law, Harriet's husband, Joseph English. Richard was sixteen at the time, and thus was not old enough to take over. In June of 1808, William died, leaving his huge estate to be fought over by his inheritors. Ultimately, through court actions lasting into the 1820's, Elizabeth Gillespie and William Gillespie Fitzpatrick had to turn over all the property William had given them and settle for a cash payment of \$20,000, one quarter of William's estate. Richard and Harriet were joint heirs of the remainder of the estate worth over \$60,000. In addition, Richard received ten slaves given to him as a gift by his father years before William's death, but which William had never released to Richard.<sup>9</sup> The long court battle by no means deprived Richard of his inheritance during the time actions in the court took place. By 1810, Richard had turned eighteen and was listed in the South Carolina census as the head of household of a plantation which had sixty slaves in the Lexington District near Columbia. Richard Fitzpatrick was at the age of eighteen one of the largest slaveholders in the Columbia area.

For whatever reason, sometime around 1816 or so, Richard left South Carolina.<sup>10</sup> We can only guess about the reasons Richard Fitzpatrick left South Carolina and his plantation. The state of his family's reputation undoubtedly played its part, and perhaps Fitzpatrick's childhood in a broken home lessened endearing attachments that might normally have kept him near his birthplace. Perhaps he just wanted to see the world and had the wealth to allow himself to do so. We do not know where Fitzpatrick went, but for whatever reasons, from this point on in his life, he "became a man of moving habits," as his grand-nephew later de-

scribed him.<sup>11</sup> One of Fitzpatrick's nieces remarked in 1854 that 'Uncle Fitzpatrick ... has seen so much of the World that he is very pleasant company.'<sup>12</sup>

We know little else about the effect of Fitzpatrick's South Carolina background on his later life. Quite likely Fitzpatrick's parents' marital difficulties contributed to the reasons why Fitzpatrick never married. Fitzpatrick's childhood also evidently made him quite a liberal on divorce, for he later supported nearly every divorce bill he ever had to vote on in the Florida Legislative Council. Fitzpatrick left no personal papers, however, that spoke directly of his personal values and attitudes that may have developed as he grew up in South Carolina. But although the innermost thoughts of Fitzpatrick are inaccessible to us, we may reasonably assume that he adopted the ideology and habits of mind that were characteristic of the planters of the South. His later actions are those of a man with the planter ideology outlined below by Eugene Genovese, an ideology characterized by:

... an aristocratic, antibourgeois spirit with values and mores emphasizing family and status, a strong code of honor, and aspirations to luxury, ease, and accomplishment. In the planters' community, paternalism provided the standard of human relationships, and politics and statecraft were the duties and responsibilities of gentlemen. The gentleman lived for politics, not like the bourgeois politician, off politics.

The planter typically recoiled at the notion that profit should be the goal of life; that the approach to production and exchange should be internally rational and uncomplicated by social values; that thrift and hard work should be the great virtues; and that the test of the wholesomeness of a community should be the vigor with which its citizens expand the economy. The planter was no less acquisitive than the bourgeois, but an acquisitive spirit is compatible to capitalism. The aristocratic spirit of the planters absorbed acquisitiveness and directed it into channels that were socially desirable to a slave society: the accumulation of slaves and land and the achievement of military and political honors.<sup>13</sup>

As the Florida peninsula opened up to American settlement in the 1820's, men from the South like Fitzpatrick brought their ideology with them. The manner in which these Southerners coexisted with Northern bourgeois, lower-class whites of both the South and the North, people from the Bahamas, blacks, and Indians – all part of the South Florida population – is the core of South Florida's early history.

## EARLY ACTIVITIES IN KEY WEST

Thirty years old when he came to Key West in 1822,<sup>1</sup> Richard Fitzpatrick immediately became one of the foremost citizens of the small town. When William Adee Whitehead finished surveying the island and laying out the town in February, 1829, streets were named after friends and relations of the original proprietors and a few distinguished citizens such as Andrew Jackson and Joseph M. White, Florida's Territorial Delegate. Richard Fitzpatrick was the only prominent citizen of Key West after which a street was named.<sup>2</sup> Fitzpatrick Street exists today in the old section of Key West.

Fitzpatrick's importance in Key West was a function of the conditions of the society outside Key West as much as a result of the acceptance, and even deference, he received in Key West. At a time when Key West was extremely dependent on both the territorial and national governments for the legitimation and ordering of the wrecking industry in particular, and Key West's continued existence in general, Fitzpatrick fit the model of respectability held by the ruling classes outside Key West. Fitzpatrick's residency and importance in Key West life were valuable assets for the young town; he helped to bring respectability and legitimacy to an area threatened by its reputation for crooked dealings and wild disorderliness.

Wrecking was the chief industry in the early years of Key West's existence. One commentator in 1851 expressed the situation well:

... First came the wreckers – from three to four hundred of them – to prey upon the carcasses of dead ships; then came the merchants and traders to prey upon the wreckers; then came the doctors and the lawyers to prey upon both the traders and the wreckers; and last came the clergy of all denominations to pray for all!<sup>3</sup>

Fitzpatrick was an important man in the early unregulated wrecking industry, prior to the establishment of an admiralty court in Key West. During part of this period, he was the only authorized auctioneer of all the wrecked property brought to Key West, a situation which led to some controversy in 1826. Key West and Saint Augustine were battling over becoming the center for the wrecking industry during the 1820's, and the Collector of Customs of Saint Augustine, John Rodman, seized on Fitzpatrick's monopolistic auctioneer's position as an example of Key West's unscrupulousness. In a letter to the U.S. Secretary of the Treasury on May 9, 1826, Rodman wrote:

... Sir, I deem it my duty to make known to you a fact, (for the information of the President of the United States) which I think deeply concerns the government of this Territory. It is this, the business of *auctioneer* at Key West, since wrecked goods have been carried there and sold to an immense amount has become very profitable. By an Act of the Legislative Council passed at the last Session, the enormous commission of 6 percent is allowed to Auctioneers in this Territory in all cases. It is estimated that wrecked property to the amount of nearly half a million of dollars, since the passage of this Act has been taken and sold at auction at Key West; for notwithstanding the repeal of the Territorial wrecking law by Congress, the wreckers still carry their cargoes there, and by what they pretend to be an arbitration the same abuses are practised as formerly, from 75 to 80 percent is often allowed. There is but one auctioneer for the whole Island, and he is George Walton, Esq., the Secretary of this Territory, Treasurer, and Acting Governor himself. Col. Walton I believe resides at Tallahassee, but he carries on the business of an auctioneer at Key West, by deputy – that is Richard Fitzpatrick who resides there transacts the business in the name of Col. Walton as his deputy, agent or attorney. Whether Col. Walton holds the *commission* of Auctioneer from the Governor or not I do not know, but the fact that all wrecked goods carried to that Island are sold in his name as the Auctioneer, Mr. Fitzpatrick acting as his deputy, agent, or attorney, is unquestionably true. I derive my information from Mr. Thomas Murphy, a gentleman of this place of respectability and intelligence, who was at Key West about two months ago and saw advertisements of goods for sale at auction in the above mentioned manner, and a number of persons belonging to this place and who went to Key West several months ago have lately returned sick and in great distress. They all confirm the Statement of Mr. Murphy and say that it was generally understood and believed at Key West that Col. Walton was the partner of Mr. Fitzpatrick in the Auctioneer's business carried on there.

I do not indeed know of any express law which forbids the Secretary of this Territory, though holding a high honorable and profitable office by appointment of the President of the United States, from also holding a very profitable office by appointment of the Governor of this Territory, and exercising that office by deputy some five or six hundred miles from his place of residence. But there appears to me to be a great impropriety in such an arrangement. My views of the matter may however be erroneous, and I respectfully submit the above information to the consideration of the President...<sup>4</sup>

Although Rodman's 6% figure for the auctioneer's commission should have been only 4% (2% of the original 6% was a territorial tax)<sup>5</sup> Fitzpatrick apparently made quite a lot of money for his parttime work as



an auctioneer. If we take Rodman's figure of \$500,000 as the correct figure for the amount of wrecked property sold in Key West in that one year, and make an assumption that Fitzpatrick split the 4% commission in half with Walton, then Fitzpatrick made around \$10,000 in auctioneer's fees in that year alone.

Although Fitzpatrick's arrangement with Walton was perfectly legal, Fitzpatrick later apparently had misgivings about the arrangement, since he sponsored a law, which passed in 1831, which provided "that it shall not be lawful for any auctioneer in this Territory to sell any goods, wares, or merchandise at auction, by deputy, or otherwise than in person, from and after the passage of this act." Perhaps Fitzpatrick's moral qualms about the auctioneer situation reflected his regret over having had to split his percentage with an absentee holding a sinecure.

Fitzpatrick held a variety of other governmental positions in the 1820's. After Fitzpatrick's term as auctioneer was over, he frequently was appointed on salvage cases as an independent appraiser of wrecked property by the Superior Court.<sup>7</sup> On at least one other occasion, Fitzpatrick was also appointed by the Court as a commissioner to arrange the settlement of an estate.<sup>8</sup> Fitzpatrick was appointed one of the judges of election in the first election held after Monroe County was formed.<sup>9</sup> He was Clerk of the County Court in 1827,<sup>10</sup> and was foreman of the Monroe County Grand Jury.<sup>11</sup> He was a member of the first Town Council of Key West.<sup>12</sup> Fitzpatrick was also one of the first notary publics on the Island.<sup>13</sup> On the Federal level, when the Navy sold off their property in Key West and moved to Pensacola, a few buildings left unsold were left in Fitzpatrick's care.<sup>14</sup> In 1828, Fitzpatrick applied for the post of U.S. Marshal for the newly created Southern District, but Henry Wilson, formerly the U.S. Marshal for the Middle District, was appointed instead.<sup>15</sup>

In 1829, Fitzpatrick found himself on the other side of the law when the Monroe County Grand Jury indicted him and George Hawkins for circulating a handbill calling Gustavus Harrison a coward for refusing to fight a duel.<sup>16</sup> From January 17, 1827 to November 21, 1829, Florida had no law against duelling, but distributing handbills against an individual who refused to accept a challenge was punishable by a fine of up to five hundred dollars.<sup>17</sup> Fitzpatrick ended up not receiving a fine for the handbill offense, however, for after one continuance, the prosecution dismissed the case in 1829. The prosecution most likely dropped its case because juries just did not want to convict men for duelling and duelling related offenses. Though some Floridians had begun to question the practice of



duelling by the late 1820's, the validity of the practice of duelling for a long time had been a part of planter ideology, and most Floridians approved of duelling as a means of settling disputes and maintaining personal courage and honor among the individual members of the society. Fitzpatrick's acquittal was one way the existence of the planter ideology among the people of Key West manifested itself.

On one other occasion Fitzpatrick found himself the subject of criminal prosecution, this time for breaking a federal law. In 1831, the Monroe Grand Jury indicted Fitzpatrick, saying that Fitzpatrick:

... At the said New River settlement in the county aforesaid with force and arms did cause and procure to be cut and as aforesaid did then and there aid and assist in cutting a certain quantity of live oak timber to wit of the value of three hundred dollars or thereabouts dollars with intent to dispose of, use or employ the same in some manner other than for the use of the Navy of the United States the same being then and there the property of the United States and then and there being and found on land the property then and there of the United States...<sup>18</sup>

The case came to trial, and Fitzpatrick was acquitted by the jury. The foreman of the jury was William Cooley, who occupied a plantation on the New River on land that Fitzpatrick owned and most likely rented to Cooley. Even if such a close connection between Fitzpatrick and the foreman of the jury had not existed, however, it was unlikely that a jury would have convicted Fitzpatrick or any other South Florida resident for such an offense, whether or not he was actually guilty. Illegal cutting and shipping of timber from the public lands was a common occurrence in Florida in the 1820's. Illegal timber cutters were in most areas of Florida the vanguard of frontier expansion.<sup>19</sup> Federal and state officials at the time noted the failure of the courts to deal with the problem, and attributed the lack of successful prosecutions to "public indifference."<sup>20</sup>

Ironically, shortly after Fitzpatrick's indictment he wrote a letter to John Simonton requesting Simonton to attempt to persuade the federal government to survey the land in what was to become Dade County, and in an attempt to sell the government on the importance of the area, Fitzpatrick spoke to Simonton of the valuable timber in the area. In Fitzpatrick's letter of December 20, 1831, he wrote:

... The Government is not aware of the abundance of fine timber suited for naval purposes to be found here, or something would certainly be done respecting it. There should be an agent on shore as

well as vessels on the coast to protect the property of the Government, and it is not possible for the agent at St. Augustine to attend to it here...<sup>21</sup>

We may perhaps be allowed a bit of cynicism about the degree of sincerity in Fitzpatrick's concern for the Government's timber interests. What the letter does show us is that the possibility of having southeast Florida readied for the immigration of other planters was far more important to Fitzpatrick than any profit he might have made from cutting timber.

While Key West's ruling class found itself with much in common, like societies everywhere disputes were also frequent among the ruling group. Several court fights Fitzpatrick had with Pardon C. Greene were representative and help to place these disputes in proper perspective.

Greene was one of Key West's largest landowners and also a prominent merchant. For many years the wharf and warehouses of Pardon C. Greene and Co. were the most important on the island.<sup>22</sup> Greene was also the type of man who gave Key West a bad reputation and made Fitzpatrick's presence so valuable. Major James M. Glassell, Commander of the Army Port at Key West, described Greene in a letter of 1832:

... I understand that Mr. Greene left his native state (Rhode Island) to defraud his creditors; left his family; got command of a Guinea-man vessel in the slave trade for Havana; made money, and not daring to go home speculated on the lands in this place, the proprietors being much in want of funds: his wife and children in their native state, he has ever since my arrival here, until very lately, lived in open concubinage with a black woman from Nassau, by whom he has children, and who left him in consequence of continued brutal treatment, during his fits of intoxication, which occur every afternoon.<sup>23</sup>

Fitzpatrick filed suit against Greene in May of 1830, alleging that on January 3, 1829, Greene had made out a promissory note for \$3,205.43 and that Greene had refused to pay the money to Fitzpatrick. Fitzpatrick sued Greene for the original sum plus damages to arrive at a total of \$3,400. Greene admitted his liability in an affidavit responding to Fitzpatrick's charges, but said Fitzpatrick in turn owed Greene \$2,644.75 for Fitzpatrick's account with Greene and Company. Greene thus claimed he owed Fitzpatrick the difference of \$560.25. The jury awarded Fitzpatrick the full sum Greene originally owed, \$3,205.23.<sup>24</sup>

Not to be outdone, during the succeeding two sessions of the Southern District Court Greene filed three suits against Fitzpatrick. In

one suit filed November, 1830, Greene said that Fitzpatrick on February 20, 1830, "with force and arms at the county aforesaid (Monroe) did place and put a very large quantity of logwood upon one side of said wharf knowingly and with intent to injure said wharf and entirely destroy the same..." Greene further claimed that the wharf was out of service from that day, February 20, to March 16, and that the cost of repairs and damage done to Greene's business amounted to \$1,200. The jury found in Greene's favor and awarded Greene the full sum of \$1,200. Fitzpatrick's motion for a new trial was dismissed by the court.<sup>25</sup>

At the next court term in 1831, Greene filed two suits against Fitzpatrick: one alleging non-payment of a debt for \$3,516 for Fitzpatrick's account with Greene and Company, and the second alleging a debt for \$600. In the \$600 case, Greene alleged that he had left Fitzpatrick in charge of Greene and Company's warehouse during one period while Greene was out of town, and that while Greene was gone Fitzpatrick took \$537 from Captain Lloyd of the wrecked vessel *Belle Isle* as payment for taking in the goods of the *Belle Isle* at Greene's warehouse, but had never turned over the \$537 to Greene. With damages, Greene said Fitzpatrick owed \$600 to Greene and Company. In reply to this charge, Fitzpatrick took the deposition of John Ford Pike of Havana. Pike testified that Lloyd had asked him (Pike) for advice about what to do with the wrecked *Belle Isle*, that he (Pike) had advised Lloyd to speak to Fitzpatrick for advice and counsel in Key West, and that he (Pike) had even gone so far as to give Lloyd a letter of introduction to Fitzpatrick. Thus, Fitzpatrick claimed that the \$537 was a fee for giving advice to Lloyd, a matter strictly between Fitzpatrick and Lloyd, separate from any fee for warehouse storage.<sup>26</sup>

As these second and third suits stretched on into the latter part of 1831, Fitzpatrick filed a countersuit for \$8,100 against Greene, Joseph Cottrell, who was Greene's business partner in Greene and Company, and Ed Chandler, their lawyer, subject to a condition that Fitzpatrick would drop his countersuit if Greene paid all court costs and dropped his two suits, which combined totalled \$4,050. Fitzpatrick said the \$8,100 suit was for damages resulting from Greene's suit against Fitzpatrick for \$4,050 "which was obtained and published without cause and to injure the credit reputation and character of plaintiff..."<sup>27</sup> Though we find no final judgment in the incomplete court records on Greene's claims for \$4,050 or Fitzpatrick's claim for \$8,100, Fitzpatrick's countersuit apparently failed to scare Greene off, for from the evidence that does remain, it seems likely that Fitzpatrick lost the suit for \$4,050. On May

20, 1831, the Court ordered the Marshal to “attach and take into your custody . . . so much of the lands tenements goods and chattels of Richard Fitzpatrick of said County as will be sufficient to satisfy the demand of Pardon C. Greene, the Plaintiff in their attachment in the full sum of four thousand and fifty dollars,” which was then, “executed upon on Sloop *Eagle* and Lot No. Three in Square No. Eight in the town of Key West together with the Houses and improvements thereon.” While it is possible such an attachment was issued before the final judgment, it is more likely that the attachment was issued subsequent to Fitzpatrick’s losing the \$4,050 suits.<sup>28</sup>

Fitzpatrick was involved in early Key West in more than just his tertiary roles in the Key West powerstructure, such as his position as an auctioneer. The sloop *Eagle* referred to in the previous writ of attachment was a wrecking boat which Fitzpatrick owned, working the Florida Keys. A subsequent court case between Fitzpatrick and his successor, P.J. Fontane and Company, contained account books which placed Fitzpatrick’s ownership of the sloop *Eagle* at least as early as 1825.<sup>29</sup> This case between Fitzpatrick and Cotterell and Company, Fitzpatrick’s only other legal battle, stretched from 1835 to 1842, when Cotterell’s lower court judgments for non-payment of debt against Fitzpatrick for \$1,124.92 and \$453.14 were overturned by territorial Florida’s final Court of Appeal on May 9, 1842.<sup>30</sup> References to the sloop *Eagle* in the Cotterell case stop with the 1831 account books, which lends even more weight to the evidence that Fitzpatrick lost the sloop *Eagle* in 1831 as a result of Pardon C. Greene’s suits.

Fitzpatrick’s direct participation in the central economic activity of Key West, the wrecking industry, did not end when Fitzpatrick gave up the sloop *Eagle*. While we do not know any specifics about the sloop *Eagle* during the time of its ownership by Fitzpatrick, we have more information about Fitzpatrick’s subsequent ownership of another wrecking boat; by at least 1834, Fitzpatrick had become the owner of the schooner *Florida* of Key West. Expenses for a year covering part of 1834 and much of 1835 were \$1,840.59, for such items as captains’ salaries and food (mainly pork, molasses, rice, coffee, flour, and tea). By the end of that fiscal year Fitzpatrick owed Cotterell and Company \$235.95 in the schooner *Florida* account, a year in which the schooner *Florida* had not salvaged any major wrecks.<sup>31</sup> In the subsequent fiscal year in 1835, however, the schooner *Florida* had a huge success, when she received two-fifths of the value of the salvage of the brig *Sea Drift*. Wrecks such as the *Sea Drift* were what later made Key West the richest city per capita in

the United States. Of the salvage worth \$51,487.14, Fitzpatrick and the *Florida* received \$20,594.85.<sup>32</sup> Even after giving the crew their share, Fitzpatrick had certainly realized quite a profit.

Fitzpatrick's ownership of wrecking boats is significant to us because it demonstrates that at least this one member of the planter class did not find wrecking incompatible with his ideology. Thus, the business of wrecking was not an activity restricted to owners and sea-captains from the North, though many of the wrecking-boat owners and sea-captains were from the North. While no one has ever studied the ownership patterns of Key West's wrecking industry, we do know that other Southerners like Fitzpatrick were involved. Fitzpatrick's nephew from South Carolina, William F. English, at one time captained a wrecker as well as owned one.<sup>33</sup>

In March of 1830, Fitzpatrick broadened his economic activities beyond the wrecking business to attempt salt-making.<sup>34</sup> He leased an interest in the Whitehead portion of the Key West ponds. From the first days of Key West, according to Jefferson Browne, "the original proprietors and first settlers of Key West considered the manufacture of salt as the most probable means of making it known in the commercial world."<sup>35</sup> While this high expectation placed on salt-manufacture is usually attributed by historians solely to the existence of natural ponds on the island, an additional consideration was that salt-making was an activity thought to be particularly attractive for large slaveholders. One writer in the *Key West Register* on the salt ponds remarked, for example, that:

... The extent of the Ponds will afford employment to at least five thousand laborers, and from the terms which have been extended to those who have already made contracts, there can be but little resque in saying that many of our countrymen who have large gangs of slaves, would find it greatly to their interest to engage in this business.<sup>36</sup>

And again, in another article in the *Key West Register*:

The extent of the pond will afford employment to a very large number of labourers in the formation of the pans; after the completion of which, except during the raking season, they might be otherwise employed. This fact should engage the attention of those who have embarked in sugar planting in Middle Florida, whose hands, during the growth of their cane, might be advantageously employed here.<sup>37</sup>

Fitzpatrick leased an interest in the Whitehead portion of the salt ponds on March 29, 1830. Fitzpatrick's rental schedule was based on the amount of salt he would produce. For the first year, Fitzpatrick's rent was set at ten bushels of salt out of every 100 bushels of salt produced, for the second year 15% of the salt produced, and for the third and following years, 25% of the salt produced. Whitehead was also careful to reserve the right to become a partner at the end of three years.<sup>38</sup>

The process of salt-making by solar evaporation, though often referred to at the time as manufacturing, was actually an agricultural activity. Like traditional agricultural pursuits, salt-making was a labor-intensive process in which one prepared an optimum situation for nature to work on its own, and after a period of time harvested the results. Jefferson Browne described how the process worked at Key West:

About one hundred acres of this property were subject to overflow at any ordinary high tide, a large portion being always under water. This was divided into compartments or "pans" one hundred feet long and fifty feet wide, separated by walls two feet high made of coral rock. Small wooden floodgates connected all ten pans, and sea water was turned into them from a large canal, in which was a floodgate for regulating the water supply; thus the water could be let into or cut off from all or any of the pans. The pans were then filled with salt water and the floodgate in the canal closed, and as the water was lowered by solar evaporation more salt water was let in. This process was repeated until the approach of the rainy season, when the water was allowed to evaporate and the salt precipitated into crystals, from an eighth to a quarter of an inch in size.<sup>39</sup>

In the Bahamas, salt-making was an established business, and it was believed in Key West that, "if experienced salt-makers could be induced to leave the West Indies and reside here, (of which there can be no doubt), it may reasonably be presumed that this valuable source of wealth will be fully and fairly developed. . ."<sup>40</sup> Fitzpatrick, like everyone else in Key West at the time, was aware of the knowledge and experience of the Bahamians in salt-making, and thus "an intelligent, educated colored man named Hart was brought from the Bahamas and placed in charge of the works. . ."<sup>41</sup> While this does seem rather remarkable, the presence of a free negro in charge of Fitzpatrick's works certainly did nothing to change the use of slave labor by Fitzpatrick in the salt-making process. In conjunction with other evidence, Fitzpatrick's hiring of a free negro for such an important position might be used to argue a lesser degree of

racism in Fitzpatrick, but every other bit of evidence we do have points to the contrary.

Although, according to Jefferson Browne, "several dry seasons promised favorable results," and though Fitzpatrick at one time "had over thirty hands employed," Fitzpatrick's salt-making activities were not successful.<sup>42</sup> On February 25, 1832, the *Niles Weekly Register* put Fitzpatrick's production at "4,000 bushels annually," far less than the expectation stated in the same article which read: "Key West is a new source for the production of salt. Ponds have been made, which are expected to supply from 500,000 to 800,000 bushels a year."<sup>43</sup> The closest Fitzpatrick came to success was, again according to Jefferson Browne, "in the summer of 1832 (when) the prospect was thought good for sixty thousand bushels, but rains set in early, and the crop was lost."<sup>44</sup>

Several reasons were advanced at the time for Fitzpatrick's failure. According to Walter C. Maloney, in *A Sketch of the History of Key West, Florida*, "(Fitzpatrick's) hopes were never realized, partly, as was thought at the time, from the demand for labor around the wharves in the town, at high rates, drawing off the hands. Prompt returns therefrom, very naturally inducing the master to disregard future prospects for present realization from the labor of his slaves."<sup>45</sup> This statement seems to indicate that Fitzpatrick himself hired out his slaves on the wharves rather than using the slaves when necessary at the salt works. Another reason advanced for Fitzpatrick's failure was the lessening of the duty on foreign salt, which duty had dropped from twenty cents to fifteen cents in 1831, and to ten cents in 1832.<sup>46</sup> It is quite possible that Fitzpatrick hired out his slaves at the expense of his salt business in the expectation that he would be able to concentrate on salt-making in the future, but that the lowering of the duty on salt and the disastrous harvest of 1832 discouraged Fitzpatrick from continuing his salt-making efforts.

## THE 1831 AND 1832 LEGISLATIVE COUNCILS

Fitzpatrick's entrance into the salt business was a cause for exultation in Key West, for his undertaking promised the fulfillment of a dream of extraordinary prosperity for the whole town. One writer in the *Key West Register* had phrased his hopes for the salt ponds in the following terms:

... When we take into consideration the existing protecting duty on salt made in this country – the immense quantity of that article that



the pond on this Island is capable of furnishing – the geographical advantages of our port by which a number of our vessels annually return in ballast from ports in the Gulf of Mexico, Cuba, etc. we should not be thought visionary in predicting that the growth of our population and commercial importance must be certain, and unparalleled in its rapidity.<sup>1</sup>

With the advent of his extraordinary popularity because of his salt-making activity, Fitzpatrick ran for Florida's Legislative Council in 1830.

Fitzpatrick defeated George Weaver of Indian Key, 69-48, in the 1830 election. Fitzpatrick carried the Key West precinct, 49-14, and the New River precinct, 13-1, but Weaver carried the Indian Key precinct 33-7.<sup>2</sup> While Fitzpatrick's strong showing at the New River precinct was probably attributable to his having begun to buy land for a plantation in that area, the abrupt difference between the Indian Key and Key West vote was due to more than just the traditional carrying of the home precinct. By 1830, Indian Key and Key West had begun an intense sectional rivalry over which port would be the center of the wrecking industry, a rivalry which was a factor to some degree in nearly every election for the Legislative Council in the 1830's in South Florida.

Fitzpatrick's election to the territory's Legislative Council in 1830 was the beginning of one of the most extraordinary legislative careers of any legislator in Florida's Territorial period. Only a few other men were as influential, and very few matched Fitzpatrick's record of election victories. Fitzpatrick served as the representative from Monroe from 1830-32, and again from 1835-36; as Dade's representative from 1837-40; and as Dade's representative in the Constitutional Convention of 1838.

Due to a change made by the 1829 Council in the date of holding both the election for the Council and the Council session itself, there was no 1830 session. In Fitzpatrick's first session, begun in January, 1831, he was appointed to the Finance Committee and the Committee on the State of the Territory.<sup>3</sup> In nearly every subsequent legislative session, Fitzpatrick was on one or another variants of these two committees, often as Chairman. Such appointments gave him a central position in several of the most significant developments of the 1830's: the controversy over the creation of banking and other corporations, and the sectionally-divided debates over such issues as statehood and the removal of the capital from Tallahassee.

Fitzpatrick introduced only one bill in 1831, the previously mentioned bill to prevent the appointment of deputy auctioneers. Fitzpatrick

was involved in numerous other issues as well, however. On January 20, Edward L. Drake of Escambia County introduced a resolution, "That a committee of five be elected, whose duty it shall be to inquire into and report upon the expediency of removing the seat of Government from Tallahassee."<sup>4</sup> The resolution passed overwhelmingly, and Fitzpatrick was one of the five men chosen. This committee's final report, which passed over Governor Duval's veto, became one of the most serious threats to Tallahassee's position in its history. The final report of the committee recommended the appointment of five commissioners to examine eligible places and make a recommendation for the site of a new capital. The committee's report strongly determined that Tallahassee should not remain the seat of government.<sup>5</sup>

Fitzpatrick was also involved in passing a bill to overturn the 1829 law which had made duelling illegal. Fitzpatrick was the Chairman of the committee of the whole which reported the pro-duelling bill to the floor, and his one affirmative vote proved crucial in the 8-7 vote passing the bill.<sup>6</sup>

Several local Key West matters were dealt with in the 1831 Legislative Council. Fitzpatrick helped to pass an appropriation for \$2,000 to build a jail in Key West.<sup>7</sup> In 1828, Fitzpatrick had been a member of the Monroe Grand Jury which originally recommended the construction of a new jail. The 1829 Grand Jury had repeated the recommendation and requested the Legislative Council for funds, which request resulted in the \$2,000 appropriation in 1831.<sup>8</sup>

In another separate local matter, Fitzpatrick presented a "petition from the President and Councilmen of the Town of Key West, praying an amendment of their Charter of Incorporation, which was read and referred to a select committee, consisting of Messrs. Fitzpatrick, Booth and Sanchez."<sup>9</sup> The petition informed the Council that no election for Town Council had been held in 1830, and that no one had continued the business of the Town Council in 1830. But that:

... On the first Monday in January 1831, agreeable to the Law establishing this Town the citizens proceeded to elect certain persons as Town Council and the choice was made of your memorialists. It having been doubted if the Act continued in force after a failure to elect members in 1830, your memorialists pray that a Law may be passed re-enacting the former act establishing the Town of Key West, with a further provision that should the Citizens omit to choose the Council on the First Monday in January in each year

they may have power to do so on the first Monday in any other month during the said year. . .<sup>10</sup>

Fitzpatrick's select committee reported out a bill which did exactly what the petition requested, and the bill passed.<sup>11</sup>

Two incidents in the 1831 Council may have led to some opposition to Fitzpatrick in the next election. Twenty-five of Key West's most prominent citizens petitioned the 1831 Council soliciting "the enactment of a law constituting a salt company in the Island of Key West composed of Pardon C. Greene Esquire and others. . ."<sup>12</sup> Shortly afterward, Mr. Gautier of Jackson County "introduced a Bill to be entitled, An Act to Incorporate the North American Salt Company . . . at Key West."<sup>13</sup> It was unusual enough that the sponsor of a local Key West bill should be Gautier rather than the home-county representative, Fitzpatrick. But even more unusual was that the bill failed at a time when nearly every bill creating a corporation passed unless it was one that excited sectional jealousies, which the North American Salt Company did not. Furthermore, the bill's defeat came about not through a roll-call vote on the floor, a procedure by which the bill would most likely have passed, but rather through legislative inaction. The bill passed second reading, but was postponed twice to a date certain and was not taken up on the second date specified.<sup>14</sup> According to Jefferson Browne, "Mr. Fitzpatrick was a member of the Council and opposed the bill and prevented its passage."<sup>15</sup>

The Key West newspaper had "estimated that this new (salt) company would require 500 vessels to transport the salt that would be made annually."<sup>16</sup> Dashing such hopes was not the way to insure re-election. Fitzpatrick's opposition to the North American Salt Company bill, "gave rise to an attack on him, which became very bitter before the election."<sup>17</sup>

Fitzpatrick's opposition to the North American Salt Company bill was motivated by self-interest: Fitzpatrick's interest in revenge against Pardon C. Greene as a part of the running battle between the two men, and Fitzpatrick's interest in protecting his own salt-making operation from competition. This confusion of the realms of public and private interest was not unusual at all at the time among the members of the Legislative Council. This type of action was quite different in their minds from something like stealing from a public fund. Acts of incorporation, for example, were routinely passed with several members of the Legislative Council on the Board of Directors. All over Florida, planters like Fitzpatrick believed they personally were creating the foundations of Florida's society, and were infected by an arrogance which did not allow them to

see the difference between their own personal interests and the interests of society as a whole.

Fitzpatrick may have caused Lackland M. Stone to run in the next election for Fitzpatrick's legislative seat when Fitzpatrick made a motion that endangered a relief bill introduced for Stone in the 1831 Council. Or perhaps Fitzpatrick knew about Stone's political plans beforehand, and tried to hinder Stone's relief bill out of pique. The "Bill for the Relief of L.M. Stone," introduced by William H. Allen of Mosquito County, had been making its way through the legislative process, having been read a second time and referred to a committee of the whole, from which "Mr. Byrd, from that committee, reported progress which report was received." But, for whatever reason "Mr. Fitzpatrick then moved that the petitioner have leave to withdraw his petition, which was granted."<sup>18</sup> It is doubtful that Stone desired to actually withdraw his petition, for it was later taken up again and eventually passed. Although Fitzpatrick voted for the relief bill on final passage, Fitzpatrick's other actions, both in making his motion to allow Stone to withdraw his petition and in allowing someone from another county to introduce the bill in the first place, indicate a lukewarm attitude at the least toward Stone's bill.<sup>19</sup>

The ensuing campaign between Fitzpatrick and Stone, then U.S. Marshal of the Southern District and a former member of the Legislative Council from Jackson County, was a stormy one. Jefferson Browne described the campaign thus:

... Mr. Fitzpatrick was candidate for re-election; communications signed "Voter," "Honestus," "One of the People," etc., appeared in the *Enquirer* in which the good and bad qualities of the respective candidates were set forth. As both gentlemen were men of culture and high standing, the charges against them were no doubt as false as those promulgated in the primaries of the present day. Among other things, Mr. Fitzpatrick was charged with having traduced and slandered the people of Key West, calling them a "set of dishonest and unprincipled men and that the people of this county were unworthy of trust." He came in for the greater share of the abuse, but was triumphantly elected.<sup>20</sup>

Fitzpatrick's elation about his re-election shows up in a chatty letter he wrote to Governor Westcott about the elections for the Council that year. (While it is important to be aware that class motivations received their concrete form through individual desires and emotions, it is also equally as important to give personal considerations their proper weight,

to realize the degree to which personal considerations were ends in themselves.) Fitzpatrick's letter to Westcott is the closest we have to a personal letter written by Fitzpatrick and reminds us of the extent to which the sheer joy of winning was a motivation in Fitzpatrick's political career.

Key West 22 Nov., 1831

James D. Westcott Esqr.

Dear Sir: I have been most anxious to hear from your part of the Territory relative to the different Elections. You will see by the returns that I make you a visit next session. The matter turned out as I always knew it would do, and I am sorry Stone offered himself as a candidate, those who call themselves his friends here have done him no good. I have heard he is very sick. Little more than half the votes in the County were taken and I lost "nearly the whole of those who did not vote" – I hope you and your family have not been visited by the dreadful fever which raged in Tallahassee and the neighborhood around it. I shall leave here about the 15th December and hope to have the pleasure to give you a hearty shake of the hand about Christmas. I hope Booth is re-elected, I want to see him. Dunlap is dead. You are truly unfortunate in the case of two in succession. Who will be the next? Please to make my respects to Mrs. W. and all the Babies –

Your friend & Sert.  
R. Fitzpatrick<sup>21</sup>

In the 1832 Council, Fitzpatrick was appointed to only the Finance Committee, of which he was Chairman. He was more active than he had been in 1831, introducing several more bills than he had previously as well as continuing to be involved in local matters.<sup>22</sup>

As he had been in the previous session Fitzpatrick was a central figure in one of the most controversial issues of the session, the relocation of the capital away from Tallahassee. The commissioners who the Council had appointed the previous year had been unable to decide on a proper location, and Fitzpatrick introduced a resolution "to provide for holding the next session of the legislative council of this territory in the city of St. Augustine, and for other purposes." The resolution passed, was vetoed by Governor Westcott, and then finally lost when the votes fell one short of overriding the veto.<sup>23</sup> The vote on the Tallahassee bill was motivated by sectional considerations, as was so much of the politics of the time. Fitzpatrick's position as a legislator for South Florida, unaffiliated with either East, Middle, or West Florida, gave him an objectivity born of

geography which resulted in the deferral of the initiative on intense sectional issues throughout the 1830's to Fitzpatrick by other more self-ishly involved legislators. Fitzpatrick's special position in this regard undoubtedly contributed to his extraordinary influence on the Council.

Fitzpatrick was again involved in several local matters during the 1832 session. No bids had been taken on the building of the Key West jail authorized at the 1831 session, so Fitzpatrick had the time extended within which the construction would be allowed to begin.<sup>24</sup> Later in 1832, bids were let for the building of the jail. Fitzpatrick submitted a bid to erect a jail with a cistern (the original Grand Jury report had recommended and the original bill had specified a cistern) for \$3,200, and John Simonton submitted a bid for \$1,699 without a cistern. The commissioners in charge of selecting someone to build the jail decided they could do without the cistern, and ended up deciding in favor of Simonton's bid.<sup>25</sup>

As in 1831, Fitzpatrick again submitted a petition from Key West citizens requesting an amendment in their Charter. While the original petition no longer exists, the bill that passed probably merely implemented the suggestions in the petition. We can thus assume the petition related to the taxation situation in Key West. The first Charter granted in 1828 authorized only a poll tax and did not allow a tax on real estate. Browne said, "This was a source of much controversy, the large landed proprietors being opposed to taxing their realty, as the major part of it was unproductive and they were freely donating lots to induce settlers to come to Key West."<sup>26</sup> The new 1832 "Act to Incorporate the City of Key West" broadened the tax base considerably, allowing the Mayor and Alderman,

... to tax and license billiard tables, to tax and license hawkers, pedlars and transient traders, to tax retailers of dry goods, grocers, commission merchants and auctioneers; to tax free negroes, mulla-toes and slaves – provided the tax on slaves shall not exceed the territorial tax on them – They shall have power to levy a tax on improved and real estate within said city, of not more than one half of one per centum upon its value, and one half of one per centum on all unimproved lots within said city...<sup>27</sup>

It is difficult to know just how much personal involvement Fitzpatrick had in this Charter change. The tax on real estate did not affect Fitzpatrick greatly, for he owned very little land on the island. On the other hand, the potential for a tax on slaves had more effect on Fitzpatrick

than anyone else. Most likely, the petition for a Charter change came from the existing Town Council, along with enough of Key West's prominent citizens such that Fitzpatrick could claim he was merely following a popular mandate in passing the Charter change. But even with this mandate, Fitzpatrick most likely earned the opposition of the large landholders. Though large landholders were quite a minority in Key West, they were a powerful minority. One of the largest landholders, Pardon C. Greene, already was feuding with Fitzpatrick. It is quite possible that this opposition of the large landholders, perhaps combined with some sectional jealousy on the part of Key West citizens over the amount of time and energy Fitzpatrick was putting into establishing a plantation on the Miami River, cost Fitzpatrick his seat on the Legislative Council. In the election for the 1833 Council, Fitzpatrick was defeated by Ed Chandler, a prominent Key West attorney and also, as Pardon C. Greene's lawyer, a target of Fitzpatrick's \$8,100 defamation suit.<sup>28</sup>

## **FREE NEGRO IMMIGRATION**

Although the defeat by Chandler temporarily knocked Fitzpatrick off the Legislative Council, he continued to play a role in the government of the island. One of the acts passed by the 1832 Council had made it unlawful for "any free negro or mulatto to migrate, or be brought into this Territory from any State of Territory within the United States, or elsewhere."<sup>1</sup> At first as a private citizen, and then as a Justice of the Peace, Fitzpatrick became the central figure in efforts to enforce this law on the island of Key West.

On August 10, 1833, Fitzpatrick appeared as a private citizen before Justice of the Peace Ede Van Evour and presented an affidavit naming ten Negroes who Fitzpatrick said had been brought into the territory of Florida contrary to the 1832 Act. Furthermore, Fitzpatrick swore that two of the Negroes had previously been deported under this act, which made their crime all the more serious because the penalty for a second offense under the law was to be sold into slavery for a period of five years. The Negroes were arrested and brought before Van Evour on September 18, 1833, who thereupon set them free "for want of testimony."<sup>2</sup> The incident did not end with the release of the Negroes, however. The 1834 Grand Jury, with Fitzpatrick as foreman, indicted Van Evour for malpractice for his action in setting the Negroes free. The Grand Jury charged that:



... the said Ede Van Evour being then and there and always a wicked and evil disposed person and well knowing the premises but devising designing contriving and subtly intending to prevent the due course and administration of law and Justice and to make the same subservient to his own private lucre and gain and to his own private wicked purposes and intentions did then and there ... cause and procure the said (negroes) to be discharged and to escape and go at large from and out of the custody of the said Marshal ... to the great hinderance and mockery of public justice of said Territory to the evil and pernicious example of all other in like case standing...<sup>3</sup>

As Justice of the Peace, Fitzpatrick was involved in several other cases involving the same statute. On May 20, 1834, as a Justice of the Peace, Fitzpatrick received testimony naming five Negroes who had been brought into the Territory illegally on several different schooners captained variously by Henry Fitzgerald and Frances Watlington. Four of the five Negroes had been seamen on boats captained by Fitzgerald, but had been discharged on reaching Key West and they had begun living on shore. In Fitzpatrick's opinion convicting the Negroes, Fitzpatrick expressed an extremely harsh interpretation of the 1832 law, an interpretation including a denial of any right of the Negroes even to appeal their conviction. Fitzpatrick's opinion stated:

... The Court will observe that the Law does not *require* any proof upon oath that a free negroe or mulattoe has been brought here contrary to law, any information of any kind is sufficient, or a citizen or officer can take hold of a free negroe or mulattoe *without a warrant* and bring him before a magistrate and if he, upon examination of the party *be of opinion* that he has come or brought into the Territory contrary to the law of 1832 to proceed and carry that law into effect. In this instance the Justice committed the Negroes and Mulattoes to jail as the Law directs. The Counsel for the free negroes asked an appeal under the 21 Section of the Law of 12 Feby. 1832 "Regulating appeals and writs of Certiorari;" upon examination of the Law under which the appeal was asked the Justice thought himself bound to refuse upon the ground that the Law in question has no bearing or reference to criminal proceedings before Justices of the Peace, and where the Justice has only the power to commit; a party could by the 2d Section of Law claim an appeal when committed by a Justice to Jail upon a charge of Murder or any other criminal offence where the testimony was ample and conclusive, if the ground taken by the counsel for the free negroes is tenable; and the criminal might by delay escape punishment. The

Act of 1832 relative to appeals and writs of certiorari, has reference to the Act of 1829, and repeals the 7th and 8th Sections of that Law, and which was not, nor never was intended to have any thing to do with criminal cases, but is applicable alone to civil proceedings before Justices of the Peace. This view of the matter is also sustained by the Law of 24th Nov. 1829 which repeals so much of the 10th and 34th Sections of the Law of 21 Nov. 1828, as conflicts with the Law of Congress the two Sections having reference to civil proceedings exclusively.

The Law of 10th Feby. 1832 is positively a criminal statute, because it prohibits the migration of free negroes and mulattoes to this Territory under certain pains and penalties, and every Justice of the Peace is bound by his oath to carry it into effect when any person or persons of this description (free negroes and mulattoes) are brought before him, and upon *examination of the party or other testimony* he be of opinion that said party "has come or been brought" into this Territory contrary to its provisions.

The Justice believes that the Law is a constitutional one, because the scrutiny of Congress and has been permitted to remain on the Statute books, and that there was no good ground for an appeal, and that the Law under which the appeal was asked had no relevancy to the case of the Free negroes.<sup>4</sup>

Although Fitzpatrick's interpretation of the free Negro law was harsh, his interpretation was not outlandish. The statutes in question could quite reasonably be interpreted in the manner in which Fitzpatrick interpreted them. Fitzpatrick had merely interpreted the law as harshly as it could reasonably have been interpreted. For the Judge of the County Court, William R. Hackley, however, Fitzpatrick's interpretation went too far. "It appears to the Judge of our said County Court, that the said Richard Fitzpatrick Esquire refused to allow an appeal for the final judgment rendered by him . . . , and that the same is illegal and unjust." Hackley had the Negroes discharged from custody after they put up bond to await their retrial in County Court.<sup>5</sup>

Two cases originally brought before Fitzpatrick and subsequently appealed to Judge Webb of the Superior Court became the major statements in South Florida interpreting the 1832 law on the immigration of free Negroes. In 1834 and again in 1835, Fitzpatrick convicted William Delancy, a free Negro who had shipped into Key West as a seaman and had then been discharged, of breaking the 1832 law. The 1834 Delancy case was appealed to Judge Webb, who upheld the conviction. But in upholding the conviction, Webb expressed the following dictum about the

1832 Free Negro Act: "The intention of the Legislature was simply to prevent free persons of colour from coming here to reside..."

... The Legislature could not have intended to say, that a free person of colour in travelling from New York to Louisiana, shall not pass along the publick roads of Florida, or if he did, should be taken up and confined in jail until it was convenient to the arresting officer to send him out of the Territory; nor could they have intended to say that a vessel passing on a voyage from New York to New Orleans, with a crew of free colour'd persons on board shall not stop at Key West or St. Marks to repair damages after a gale of wind, without incurring the liability of having the whole crew seized and sent to jail, there to remain until the Sheriff thought proper to send them out of the Territory...<sup>6</sup>

Webb made his dicta into law in the case of "Territory of Florida vs. John Steward et. al," a case in which Fitzpatrick had convicted a group of five free Negroes in 1835. Unlike the Delancy case, Fitzpatrick's convictions did not meet with approval this time from Judge Webb. In the first place, Judge Webb strongly disapproved of Fitzpatrick's evidentiary procedures.

... Had the applicants relied upon the defects in the commitment as shown by the return of the sheriff, I should have felt it my duty to discharge them from custody, as neither the return itself, nor the papers referred to, shew any offense on the part of the prisoners, or any good cause for their arrest and detention; but as they have themselves placed all the matters before me by the introduction of evidence, I must now, do that, which I conceive the magistrate should have done, when they were before him:...

According to Webb's investigation, all five of the free Negroes in the "John Steward et. al" case had migrated to Key West long before the passage of the 1832 Act, but had left the Territory for one reason or another, and then later returned to Key West. One of the men Fitzpatrick had convicted, Thomas Stout, had left merely on a short trip about a business matter. Fitzpatrick had interpreted the words, "not be lawful for any free Negro or mulatto to migrate, or be brought" in the original statute in such a way as to mean that if a free Negro resident left the Territory for any length of time and in any sense was "brought" back, like Stout had been brought back as a passenger on a boat, then the Negro was in violation of the statute. Webb's opinion was that the Council had not

intended for the word "brought" to mean anything different than the word "migrate." Webb believed that,

(the object) . . . sought to be attained was no other than to prevent the future settlement within the limits of Florida of a class of persons believed to be injurious, rather than beneficial to its interests . . .<sup>8</sup>

Judge Webb then went on to consider the other free Negroes besides Stout charged in the case, and determined that three of the rest were analogous to Stout's situation, having maintained their residency in Key West with no intention of establishing their residence elsewhere. The fifth individual, however, Felix C. Ruby, was determined by Webb to have established a home and family in the Bahamas, to which Ruby had travelled and then returned to his long-established business as a carpenter at Key West, Webb thus upheld Ruby's conviction on the grounds that by establishing a home and family in the Bahamas, Ruby had given up his residency in Key West and thus could not legally return to reside in Key West because of the 1832 law.<sup>9</sup>

In each of these cases concerning the migration of free Negroes, Fitzpatrick took a decidedly sterner position than did either Van Evour, Hackley or Webb. All over the South, planters were afraid of a slave insurrection aided and abetted by free Negroes. In particular, the Nat Turner insurrection, which had occurred shortly before the 1832 Legislative Council session, had inflamed the planters' fear of free Negroes and slaves and probably had led to the enactment of the 1832 Statute prohibiting the immigration of free Negroes. Fitzpatrick's interpretations of the 1832 law certainly were not inconsistent with the intention to keep the free Negro population as low as possible, which was the intention behind the passage of the bill. Even if one regards Fitzpatrick's interpretation of the word "brought" as irrational in a logical sense, one could hardly consider his interpretation as irrational from the point of view of a strong planter ideology; that is, one could hardly disagree that, if it was an irrationality, then it was one which grew out of planter ideology, one which was more consistent with a strongly and harshly felt planter ideology than the more limited interpretation of Webb.

The split between Fitzpatrick and the other judges is quite significant, for it is a concrete indication of weakness in the planter ideology among the ruling class in Key West. It is doubtful that three separate judges in Middle Florida would have decided the way these South Florida judges did. It is worthy of note that neither Van Evour,

Hackley or Webb were major slaveholders, and it is far from coincidental that they were not, since they lived and worked in a non-slave-based economy with comparatively greater numbers of Northern bourgeois among the ruling class. It is also far from coincidental that Fitzpatrick, the upholder of the most stringent interpretations of the 1832 Statute, was the man who owned the most slaves in the area, and who by the time of these cases had begun to establish a plantation on the Miami River where his slaves were involved in more economically significant activities than being household servants. The weakness in planter ideology as manifested in the free Negro cases can be attributed in some measure to the lack of a slave-based economy and its resulting social structure.

## NOTES

### Introduction

1. Fitzpatrick to Simonton, Dec. 30, 1831, enclosed in Simonton to Hayward, Dec. 24, 1831, \*NA, GLA. (Misc. Letters, Received).

### South Carolina Background

1. Fitzpatrick was listed as 58 years old in the 1850 U.S. Census for Brownsville, Texas of Oct. 11, 1850, 33rd Congress, 2d Session, U.S. House Reports, and as 62 in Report No. 7 Committee on Military Affairs, *Reports of Committees of the House of Representatives, Made During the Second Session of the Thirty-Third Congress, 1854-55*. (Washington D.C., A.O.P. Nicholson, Printer, 1855).

2. Richland County Probate Records, Estate of Richard Fitzpatrick, Oct. 13, 1883, Box 117, package number 3025, South Carolina State Archives, Columbia, S.C.

3. S.R. Mallory to Chairman of the Committee on Military Affairs, in Claim of Richard Fitzpatrick, *U.S. Court of Claims Reports*, Vol. 3, 35 Congress, 1st Session, No. 175 (Washington D.C.: James Steedman, Printer, 1858).

4. House of Research Committee, *Biographical Directory of the South Carolina House of Representatives*, Vol. 1, 1692-1973. (Columbia: University of South Carolina Press, 1974).

5. Richland County Chancery Records, Bill for Relief of Elizabeth Denton vs. Joseph English, Roll 159, South Carolina State Archives, Columbia, South Carolina.
6. Richland County Chancery, Denton vs. English.
7. Richland County Chancery, Denton vs. English.
8. Richland County Chancery, Denton vs. English.
9. Richland County Chancery, Denton vs. English.
10. Richland County Chancery, Denton vs. English.
11. Richland County Probate, Richard Fitzpatrick.
12. Maria E.P. English (Mrs. John English) to her sister, May 15, 1854. Means-English-Doby Papers, Unpublished Letters, 1828-1917. University of South Carolina. South Carolina Collection, Manuscripts Division, Columbia, South Carolina.
13. Eugene Genovese, *The Political Economy of Slavery* (New York: Vintage, 1967), p. 28.

### Early Activities in Key West

1. Col. R. Fitzpatrick, "Col. Fitzpatrick proposing to end the Florida War by Contract," House of Representatives Committee on Military Affairs, 1849, Memorial. NA, HR 26A-GH5, #669 .
2. Jefferson Browne, *Key West, the Old and the New* (Gainesville: University of Florida Press, 1973, facsimile reproduction of 1912 edition), p. 52.
3. *The Autobiography of Joseph Le Conte*, in Florida State University Library, pp. 138-139.
4. John Rodman to the Secretary of the Treasury, May 9, 1826, in *Territorial Papers of the United States, Florida Territory, Vol. 23* (Washington, D.C.: GPO), pp. 537-538.
5. "An Act to provide, in part, for raising a Revenue," passed Dec. 9, 1825, in *Acts of the Legislative Council, 1825*, pp. 60-62.
6. "An Act to amend an Act concerning the Appointment of Auctioneers," Approved February 10, 1831, in *Acts of the Legislative Council*, p. 240.
7. Records of the superior Court for the Southern Judicial District, Federal Records Center Atlanta, see cases involving Schooner Canton, Barque, Jean Rey, and the Brig Union.
8. "Estate of H.D. Neale," Court papers of the County Court of Monroe County and of the Superior Court for the Southern Judicial District, Monroe County Public Library, Key West, Fla.
9. *Territorial Papers*, Vol. 23, p. 622.
10. Unpublished Biographical file on Richard Fitzpatrick in Monroe County Public Library.
11. Court Papers in Monroe County Public Library.
12. "An Act to Incorporate the Island of Key West," *Acts of the Legislative Council, 1828*.
13. *Territorial Papers*, Vol. 23, p. 1007.
14. *Territorial Papers*, Vol. 23, p. 669.
15. *Territorial Papers*, Vol. 24, p. 13.
16. "Territory of Florida vs. Richard Fitzpatrick and George D. Hawkins," Court papers in Monroe County Public Library, (hereafter cited as MCPL).
17. Rebecca Keith, "The Humanitarian Movement in Florida, 1821 to 1861," Unpublished Master's Thesis, Florida State University, 1951, p. 23.
18. "United States vs. Richard Fitzpatrick, Indictment for Cutting Live Oak on Public Land," Court Papers in MCPL.

19. William N. Thurston, "A Study of Maritime Activity in Florida in the Nineteenth Century," Unpublished Ph.D. Dissertation, Florida State University, 1972, pp. 50-56.

20. William F. Steele to the Secretary of the Navy, December 19, 1823, *Territorial Papers*, Vol. 22, p. 809, as quoted in Thurston.

21. Fitzpatrick to Simonton, Dec. 30, 1831, enclosed in Simonton to Hayward, Dec. 24, 1831.

22. Walter C. Maloney, *A Sketch of the History of Key West, Florida* (Gainesville: University of Florida Press, 1968, facsimile reproduction of the 1876 edition), p. 71.

23. Florida Territorial Papers, Vol. 24, p. 763.

24. "Richard Fitzpatrick vs. Pardon C. Greene," Court Papers in MCPL.

25. "Pardon C. Greene vs. Richard Fitzpatrick," Court Papers in MCPL.

26. "Pardon C. Greene vs. Richard Fitzpatrick," Court Papers in MCPL.

27. "Richard Fitzpatrick vs. Pardon C. Greene," Court Papers in MCPL.

28. "Pardon C. Greene vs. Richard Fitzpatrick," Court Papers in MCPL.

29. "Joseph Cotterell and Company vs. Richard Fitzpatrick," Court Papers in MCPL.

30. Record of Territorial Florida Supreme Court, May 1842, microfilm copy in P.K. Yonge Library of Florida, Gainesville, Florida.

31. "Cotterell vs. Fitzpatrick," Court Papers in MCPL.

32. "Peter Stout vs. Brig Sea Drift," Records of the Superior Court for the Southern Judicial District, Federal Records Center, Atlanta.

33. Records of the Superior Court for the Southern Judicial District, Federal Records Center, Atlanta.

34. Deed between William Whitehead, John Whitehead, and Richard Fitzpatrick, March 29, 1830, Monroe County Deed Book, MCPL.

35. Jefferson Browne, p. 112.

36. *Key West Register*, March 5, 1829, microfilm copy in P.K. Yonge Library of Florida History at University of Florida, Gainesville, Florida.

37. *Key West Register*, February 12, 1829, microfilm in P.K. Yonge Library of Florida History at University of Florida, Gainesville, Florida.

38. Deed between Whitehead and Fitzpatrick, Monroe County Deed Book.

39. Jefferson Browne, p. 112.

40. *Key West Register*, February 12, 1829.

41. Walter C. Maloney, p. 22.

42. Jefferson Browne, pp. 112-113.

43. *Niles Weekly Register*, Feb. 25, 1832.

44. Jefferson Browne, pp. 112-113.

45. Walter Maloney, p. 22.

46. *Niles Weekly Register*, Vol. 41, Jan. 14, 1832, p. 374.

### The 1831 and 1832 Legislative Councils

1. *Key West Register*, March 5, 1829.

2. Territorial Election Returns, 1830, Monroe County, State Archives, Tallahassee, Florida.



3. "Proceedings of the 1831 Legislative Council," original manuscript on microfilm at P.K. Yonge Library of Florida History, University of Florida, Gainesville, Florida.
4. "Proceedings of the 1831 Legislative Council."
5. "Proceedings of the 1831 Legislative Council."
6. "Proceedings of the 1831 Legislative Council." Jan. 25, 1831.
7. "Proceedings of the 1831 Legislative Council." Monroe County Grand Jury Reports, 1828 and 1829.
8. Monroe County Grand Jury Reports, 1828 and 1829, in Records of the Superior Court for the Southern Judicial District, Federal Records Center, Atlanta.
9. "Proceedings of the 1831 Legislative Council."
10. "Memorial of Town Council of Key West praying an amendment of the Charter of Incorporation;" Committee Reports of the Territorial Legislative Council, 1831, State Archives, Tallahassee, Florida.
11. "Proceedings of the 1831 Legislative Council."
12. "Memorial of citizens of Key West requesting enactment of a law creating a salt company," Committee Reports of the Territorial Legislative Council, 1831 Legislative Council," State Archives, Tallahassee, Florida.
13. "Proceedings of the 1831 Legislative Council," Feb. 2, 1831.
14. "Proceedings of the 1831 Legislative Council."
15. Jefferson Browne, p. 112.
16. Jefferson Browne, p. 112.
17. Jefferson Browne, p. 112.
18. "Proceedings of the 1831 Legislative Council."
19. "Proceedings of the 1831 Legislative Council."
20. Jefferson Browne, p. 129.
21. R. Fitzpatrick to James Westcott, Nov. 22, 1831, Governor General Correspondence, 1825-1921, State Archives, Tallahassee, Florida.
22. *Journal of the Proceedings of the Legislative Council 1832*, original published volume in State Library of Florida, Tallahassee, Florida.
23. *Journal of the Proceedings of the Legislative Council, 1832*.
24. *Journal of the Proceedings of the Legislative Council, 1832*.
25. Jefferson Browne, p. 59.
26. Jefferson Browne, p. 50.
27. "Act to Incorporate the City of Key West," in *Acts of the Legislative Council, 1832*.
28. Territorial Election Returns, 1832, Monroe County, State Archives, Tallahassee, Florida.

### Free Negro Immigration

1. "An Act to Prevent the Future Migration of Free Negroes or Mulattoes to this Territory, and for other purposes," *Acts of the Legislative Council, 1832*.
2. "Territory of Florida vs. William Cary et. al.," Court Papers in MCPL.
3. "Territory of Florida vs. Ede Van Evour," Court Papers in MCPL.
4. "Territory of Florida vs. John Hepburn et. al.," Court Papers in MCPL.
5. "Territory of Florida vs. John Hepburn et. al.," Court Papers in MCPL.

6. "Territory of Florida vs. William Delancy," Court Papers in MCPL.
7. "Territory of Florida vs. John Stewart et. al.," Court Papers in MCPL.
8. "Territory of Florida vs. John Stewart et. al.," Court Papers in MCPL.
9. "Territory of Florida vs. John Stewart et. al.," Court Papers in MCPL.

This Page Blank in Original  
Source Document