

Lockwood

The district court's quotation of Lockwood v Bowles (page 9) is altered in a manner consistent with abuse of discretion and the indulgence of prejudice against Weisberg and bias in favor of the defendants. This is fortified by examination of both the facts in that case, which are not in any way like those in this litigation, and the exceptions cited in that decision, which are relevant in this litigation. In the district court's version, the decision says, "Fraud, inter parties, without more [is not] a fraud upon the court." The "ironclad" formulation of this quotation, "is not," is unfaithful to what, without apparent need, is replaced, "should not be." This means that under some conditions it could be. Bearing on this, Lockwood states "that intrinsic fraud is discoverable through the ordinary processes of the trial itself, such as the right to cross-examine - a right forfeited by defendants in the instant case." (page 630) Weisberg did ~~not~~ ^{not} forfeit this right - he was denied it by the district court, which he did petition for a trial only to receive no answer, or have his petition ignored.

"In the instant action," Lockwood states at page 629, "plaintiffs have been greatly prejudiced by defendants' fourteen year~~s~~ delay," but Weisberg acted as rapidly as he considered proper and possible, without any delay. During that 14 years almost all the witnesses died and the new evidence was largely affidavits by an admitted incompetent - who had been available before she became incompetent. Lockwood says that the conditions in that case made granting relief under the conditions existing in that case inequitable but posits the possibility of relief "where no such conditions have arisen - no such equities intervened - mere lapse of time that is not so excessive as to warrant a presumption of their existence ought not bar relief where actual fraud has been committed" (Citing 36 App. D.C. 315 (1911))