IN THE COURT OF APPEAL FOR JAMAICA.
CRIMINAL APPEAL NO. 142/62

REGINA

V.

GLADYS NELSON

- WOUNDING -

BEFORE: Mr. Justice Phillips (Actg.)President.)
" " Duffus
" " Waddington (Actg.)

15th October, 1962.

Mr. E.N.A. Henriques for the Appellant.

Mr. L.G. Barnett for the Crown.

JUDGMENT OF THE COURT DELIVERED BY MR. JUSTICE WADDINGTON:

The appellant was convicted in the Resident Magistrate's Court for the parish of Clarendon on a charge of wounding contrary to section 18 of the Offences against the Person Law, Chapter 268.

Apart from a medical certificate, describing the injury sustained by the complainant, which was tendered in evidence, the only evidence against the appellant of the incident out of which the charge arose was the evidence of the complainant, a school girl, whose age was not stated in evidence.

The complainant gave sworn evidence in which she stated that on May 10, 1962 some words passed between herself and the appellant, and that the appellant struck her on the head with a piece of board causing a wound. The medical certificate

showed that the complainant suffered a lacerated wound $1\frac{1}{2}$" x $\frac{1}{2}$" on the back of the head.

In answer to a question in cross-examination the complainant stated:-

> "I do not know what it means when I took the Bible and swear."

At the close of the case for the crown the appellant's counsel submitted that a prima facie case had not been made out as the witness did not understand the oath. To this submission the Court ruled:-

> "Witness over 13 and question put not specific as to whether witness understands nature of an oath - besides medical evidence to corroborate."

The appellant thereupon gave sworn evidence, denying that she had struck the complainant on her head with the board as alleged by the complainant but that the complainant had hit the appellant on her head with the board and in the ensuing struggle to get the board from the complainant the complainant fell backwards and hit her head.

Two main grounds of appeal were argued before us:

1. That the proper foundations were not laid for the complainant to give testimony. On the contrary, she said in cross-examination that she did not understand what was meant by holding the Bible and taking the Oath.
2. That the complainant's evidence should have been treated as unsworn testimony corroboration as a matter of law, as to her injuries and how she came by same.

It is clear that an infant is not competent to give evidence on oath in a judicial proceeding unless he or she

understands the nature of an oath and the consequences of false-hood.

The first question which we have to determine, therefore, is whether or not the complainant understood the nature of an oath . If she did not, then she would be incompetent to give sworn evidence, and in that case the second question would then arise as to whether her evidence could be treated as unsworn evidence in accordance with the provisions of section 53 of the Juveniles Law, Cap. 189.

It does not appear from the record that there was any examination of the complainant before she was sworn, in order to ascertain whether or not she understood the nature of an oath. No doubt the Resident Magistrate assumed, from the apparent age of the complainant, that she was old enough to be able to understand the nature of the oath which was administered to her. Competency, however, depends not so much on age but, as stated above, on the ability to understand the nature of an oath and the consequences of falsehood. Be that as it may, it appears to us that when the complainant stated in cross-examination that she did not know what it meant when she took the Bible and swore, this evidence created a grave doubt as to the complainant's understanding of the nature of the oath and the Resident Magistrate should then have been put on enquiry to ascertain by means of a proper examination of the complainant whether or not she really understood the nature of an oath. This examination could have been made by the Resident Magistrate even after the submission by the appellant's counsel. It does not appear that he did so, however, and as the evidence now stands it appears to us that there is a real doubt as to

whether the complainant was in fact competent to give sworn evidence. If she was incompetent then her evidence would be inadmissable, and as her evidence was the only material evidence against the appellant it follows that a prima facie case would not have been established against the appellant.

This brings us to the second question. If the complainant was/competent to give sworn evidence can her evidence be treated as unsworn evidence under section 53 of the Juveniles Law. We think not. In order that unsworn evidence may be received under section 53, it is necessary that the court should be satisfied not only that the child does not understand the nature of an oath, but that she is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. It does not appear that any examination was conducted by the Resident Magistrate on which he could have been satisfied as to any of these prerequisites. In any event, the proviso to section 53 requires corroboration of any unsworn evidence given in accordance with the section before an accused can be convicted of the offence charged. The Resident Magistrate appears to have treated the medical certificate as evidence in corroboration of the complainant's evidence, but it was conceded by counsel for the Crown that this evidence could not be treated as corroboration, with which we agree.

For these reasons we allow the appeal and quash the conviction.

(Sgd.) R.T. Phillips
President (Actg.)

(Sgd.) H. C.M. Duffus, J.

(Sgd.) G.H. Waddington, J.