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JAGGERS v ELLIS: SEEING THE WOOD FOR THE TREES

Peter Vaines¹

The interpretation of tax statutes is a subject much in vogue at the moment and many different views are being expressed - some more purposefully than others. This short article is intended to highlight an interesting development in this area which puts one in mind of the "duck test" propounded by President Bush - which Mr Justice Lightman seems to have turned into the "elephant test".

In the case of *Jaggers (trading as Shide Trees) v Ellis (Inspector of Taxes)* [1997] STC 1417, the taxpayer carried on a business of planting and cultivating young coniferous trees on nine acres of land in the United Kingdom. The taxpayer sold the trees directly to the public as Christmas trees. The question was whether her activities were within section 53 Taxes Act 1988 or whether she was outside the scope of the section by reason of section 53(4) on the grounds that she was occupying "land which comprises woodlands".

There is no statutory definition of woodlands and the term must therefore take its ordinary meaning. The Court explained that the taxpayer had to establish that on any reasonable use of the English language, her Christmas tree plantation fell within the description of woodlands.

To find the ordinary meaning we should perhaps start (although not necessarily finish) with the dictionary. The *Shorter Oxford English Dictionary* defines woodland as "land covered with wood, i.e. with trees; a wooded region or piece of ground". The land in question was all planted to young coniferous trees - predominately Norway Spruce with some areas of Noble and Caucasian Fir. Coniferous trees, and in particular Norway Spruce, are a conventional choice for commercial woodland but these were not planted at the usual 5-6 feet spacing but at three feet spacing which was normal for Christmas trees - no doubt having regard

¹ Peter Vaines FCA, ATII, Barrister, Brebner, Allen & Trapp, 180 Wardour Street, London W1V 4LB. Tel: (0171) 734 2244 Fax: (0171) 287 5315.

to their intended period of growth. The trees were pruned to provide a pattern of growth which presented a pyramidal appearance appropriate to a Christmas tree.

The taxpayer's argument was that the land in question was covered with trees and accordingly satisfied the description of woodlands. To many minds this may look like a compelling argument. Indeed, one might say that having regard to the Court's explanation of the principles to be adopted, it would be overwhelming. The site was without doubt an area of land covered with trees. If that were not enough one could look at the secondary description, "a wooded region or piece of ground". It can hardly be denied that this is satisfactory too. Nine acres may be inadequate to be regarded as a "region" but it was certainly a piece of ground covered with trees three feet apart and could hardly be described as anything other than wooded.

However, this conclusion is wrong.

Lightman J explained that as far as he was concerned:

"The term "woodland" connotes a wood, a sizeable area of land to a significant extent covered by growing trees of some maturity, height and size."

It might perhaps be asked why the area of land which satisfied the meaning of woodland as an ordinary word in the English language, needed to satisfy these additional conditions which are not mentioned in the dictionary. One might also ask how mature, how high and how big the trees have to be to satisfy this extended definition.

Perhaps if we read on:

"There is no mathematical or scientific formula for deciding the area of land, the density of the trees or maturity, height or size required for this purpose."

No, this does not help. But never mind, there is another test to be considered. The trees involved did not just have to grow on the land and grow to an unspecified size, height or maturity, they also had to be capable of being used for timber production:

"As to the maturity, height and size of the trees there is something to be said for the rule of thumb that their wood should be capable of being used as timber, for woodlands are frequently used and cultivated for timber production and this is the size of trees ordinarily associated in the mind's eye with a wood."

It seems that the definition of woodland is very much more complicated than originally suggested. We are now a very long way from the dictionary definition. Admittedly, some areas of woodland are planted for the purpose of creating timber, but this is by no means always the case; not all woodlands are created for commercial purposes but they do not cease to be woodlands just because it is not intended that the trees be cut down and used as planks. There is certainly no requirement in the dictionary definition that this should even be in contemplation.

But there is yet another test:

"Whether the trees on a particular area of land are such as to entitle it to be regarded as woodland is very much a matter of impression and personal judgement for the viewer. He may find it difficult (if not impossible) to give his definition of woodland as he would of an elephant, but he will know when he has had the pleasurable experience of seeing either."

So the definition of woodland comes down to whether the person who looks at them gets the impression of something which he thinks is woodland. Such an arbitrary test is almost bound to lead to disaster. How well informed does the viewer need to be? Does he need glasses or a telescope or is it enough to view the wood from a distance with the naked eye? This could lead to serious misjudgment. The area giving the impression of woodland might in fact be an army camouflaged with branches. Legend has it that one Macbeth made a profound error of this nature.

In order for the viewer to gain the impression of whether an area of land is woodland, he must first have some idea of how to define woodland. Otherwise the process is circular. Nevertheless, the idea was refined further by Lightman J with the suggestion that the trees planted by Mrs Jaggers had neither (sic) the maturity, height or size and resembled bushes rather than timber trees. The reference to timber is perhaps the key element here. Did the trees look as if there were to be felled for the purposes of timber production? Clearly not; they were Christmas trees and were going to be felled or otherwise cut down for sale to persons who wanted to use them as ornamental trees in their natural state, rather than turned into planks. The suggestion that the trees resembled bushes seems strange unless one argues that the trees were in fact bushes. They were not bushes; they were Christmas trees. If the viewer thought they were bushes he would have been mistaken. If as a result of this error he concluded that the area was not an area of land covered with trees but an area of land covered with bushes he would have been equally mistaken.

So we are left with the position that Mrs Jaggers had an area of land which fully satisfied the relevant definition of woodland in the English language. However, for

reasons which could not be explained, the area of land in question could only be regarded as woodland if it satisfied a different definition which the Court said it was difficult if not impossible to articulate. It is respectfully submitted that such a test falls below the degree of precision to which Mrs Jagers (and everybody else) could reasonably feel entitled.

On the tests employed in this case, it must follow that a blind judge or commissioner would be incapable of adjudicating the matter. He could not have viewed the trees and gained the impression which is apparently so necessary. Nor could he have called witnesses to assist him at least on this aspect. He would have been in the hopeless position of having to decide the matter on the merits of the legal argument.