



ST. CHRISTOPHER AND NEVIS

CHAPTER 4.02 (N)

NEVIS LAND ACQUISITION ORDINANCE

Revised Edition

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NEVIS LAND ACQUISITION ORDINANCE

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CHAPTER 4.02 (N)

NEVIS LAND ACQUISITION ORDINANCE

AN ORDINANCE TO AUTHORISE THE ACQUISITION OF LANDS FOR PUBLIC PURPOSES, AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I

PRELIMINARY

Short title.

1. This Ordinance may be cited as the Nevis Land Acquisition Ordinance.

Interpretation.

2. In this Ordinance—

“Administration” means the Nevis Island Administration;

“authorised officer” means any person who may from time to time be appointed as such by the Governor-General acting in accordance with the advice of the Cabinet;

“Cabinet” means the cabinet of ministers of the Administration;

“Minister of Finance” means the member of the Administration responsible for finance;

“Minister of Lands” means the member of the Administration responsible for land;

“person interested” means every person claiming, or entitled to claim, compensation under this Ordinance:

Provided that a tenant by the month or at will shall be deemed not to be a person interested for the purposes of this Ordinance;

“public purpose” means a purpose connected with or incidental to the specified matters in Schedule 5 of the Constitution of St. Christopher and Nevis and includes the purpose of fulfilling any obligation of the Nevis Island Administration and any purpose pertaining or ancillary thereto.

PART II

ACQUISITION OF LAND AND ABANDONMENT OF ACQUISITION

Acquisition of land.

3. (1) If the Governor-General, acting in accordance with the advice of the Cabinet, considers that any land should be acquired for a public purpose he may cause a declaration to that effect to be made and published by the Secretary to the Cabinet in the manner provided by this section.

(2) Every declaration shall be published in two editions of a newspaper of general circulation in Nevis and a copy of every such declaration shall be posted on one of the buildings (if any) on the land to be acquired or exhibited at suitable places

in the locality in which such land is situate, and in the declaration shall be specified the following particulars relating to the land which is to be acquired—

- (a) the parish or district in which the land is situate;
- (b) a description of the land giving the approximate area and such other particulars as are necessary to identify the land;
- (c) in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;
- (d) the public purpose for which the land is required.

(3) Upon the second publication of the declaration in a newspaper as aforesaid the land shall vest absolutely in the Crown, and the authorised officer and his agents, assistants and workmen may enter and take possession of the land accordingly.

(4) Nothing in this section shall be deemed to prevent the acquisition of lands for public purposes by private treaty.

Preliminary notification and power to enter land.

4. If it appears to the Governor-General acting in accordance with the advice of the Cabinet that any land is likely to be required for a public purpose and it is necessary to make a preliminary survey or other investigation of the land, he may cause a notification to that effect to be made by the Secretary to the Cabinet and published in a newspaper of general circulation in Nevis and at the same time in notices to be exhibited at suitable places in the locality in which the land is situate, and thereupon it shall be lawful for the authorised officer and his agents, assistants, and workmen, to do all or any of the following things—

- (a) to enter upon and survey and take levels of any land in any locality to which the notification relates;
- (b) to dig or bore into the sub-soil of such land;
- (c) to do all other acts necessary to ascertain whether the land is adapted to such purpose;
- (d) to set out boundaries of the land intended to be taken, and the intended line of work, if any, proposed to be done thereon;
- (e) to mark levels and lines by placing marks and cutting trenches;
- (f) where otherwise the survey cannot be completed, the levels taken or the boundaries or lines of the work demarcated, to cut down and clear away any standing crop, fence, trees or bush;
- (g) to do all such other acts as may be incidental to or necessary for any of the purposes aforesaid:

Provided that the authorised officer shall not enter into any building, or into or upon any enclosed yard, court or garden attached to a dwelling house, except at reasonable hours, and except with the consent of the occupier thereof, without previously giving to such occupier at least seven days' notice in writing of his or her intention to do so:

Provided further that compensation shall be assessed and paid to the persons interested in the land so entered for any actual damage or injury resulting to them by reason of the exercise of the powers conferred by this section—

- (i) in so far as it relates to land the acquisition of which is subsequently deemed to be abandoned under section 9 or

abandoned under section 10, as though it were compensation payable under this Ordinance for the acquisition of the land;

- (ii) in so far as it relates to land the compulsory acquisition of which is subsequently completed under section 3, as though it were part of the compensation for the acquisition of the land.

Power to apply land to purposes of acquisition without waiting for formal vesting.

5. If, at any time after the publication of a notification in accordance with the provisions of section 4, it appears to the Governor-General acting in accordance with the advice of the Cabinet that the land or some parcel of the land to which it refers should be acquired but that for any reason it is not possible to make an immediate declaration to that effect, it shall be lawful for the Governor-General acting in accordance with the advice of the Cabinet to direct the authorised officer to do any work on the land or parcel thereof connected with the use to which the land is intended to be put on its acquisition, and thereupon the authorised officer may proceed with the execution of the work:

Provided that compensation shall be paid to the persons interested for any actual damage or injury resulting to them by reason of the exercise of the powers conferred by this section and shall be determined in the same way as compensation for actual damage or injury resulting from the exercise of the powers conferred by section 4.

Authorised officer to treat with landowner.

6. (1) As soon as any declaration has been published in accordance with the provisions of section 3, the authorised officer shall without delay, enter into negotiations (or further negotiations) for the purchase of the land to which the declaration relates upon reasonable terms and conditions, and voluntary agreement with the owner of the land.

(2) It shall not be necessary for the authorised officer to await the publication of the declaration before he endeavors to ascertain from the owner the terms and conditions on which he is willing to sell his land, but no negotiations or agreement shall be deemed to be concluded unless and until the conditions of sale and acquisition have been approved in writing by the Cabinet.

Demarcation of land and issue of notice of acquisition.

7. (1) As soon as may be after any land has been acquired compulsorily, the authorised officer shall, if the land has not been set out or if it cannot be identified by reference to any plan, cause the same to be set out, and he shall also issue a notice of acquisition in accordance with the provisions of this section.

(2) Every notice of acquisition under this section shall—

- (a) state the decision of the Governor-General acting in accordance with the advice of the Cabinet to acquire and take possession of the land compulsorily;
- (b) contain the particulars which, in relation to the land, were included in the declaration provided for by subsection (2) of section 3; and

- (c) require all persons interested, as soon as is reasonably practicable, either—
- (i) to appear personally or by attorney or agent before the authorised officer to state the nature of their respective interests in the land and the amounts and full particulars of their claims to compensation in respect of those interests, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated; or
 - (ii) to render to the authorised officer a statement in writing, signed by them or by their attorneys or agents, setting forth the like matters.

(3) The authorised officer shall cause a copy of the notice of acquisition to be served, either personally on, or by post addressed to the last known place of abode or business of, every person who is known or believed by the authorised officer to be entitled to compensation in respect of the acquisition, and whose whereabouts are known to the authorised officer:

Provided that where the whereabouts of any such person are not known, the authorised officer shall cause copies of such notice to be posted on one of the buildings (if any) on the land or exhibited at suitable places in the locality in which the land is situate.

(4) Any person who, without lawful authority or excuse, removes or destroys any landmark placed, or removes or defaces or destroys any notice posted or exhibited, by the authorised officer in or upon the land or any building thereon in accordance with the provisions of this Ordinance, shall be liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months.

Authorised officer may require information as to interest in land.

8. (1) The authorised officer may, by notice served personally, or by post addressed to the last known place of abode or business of the person concerned, require the owner or occupier of, or any person interested in, any land, or in any part thereof, in respect of which a declaration or a notification has been published in a newspaper of general circulation in Nevis under section 3 or section 4 to deliver to him within a time to be specified in the notice, being not less than twenty-one days after service of the notice, a statement in writing containing, so far as may be within his own knowledge, the name of every person possessing any interest in the land, or any part thereof, whether as a partner, mortgagee, lessee, tenant or otherwise, and the nature of such interest.

(2) Every person who is required to make and deliver a statement under this section and who, without reasonable excuse, refuses to make or deliver such statement, or willfully makes any such statement which is false or incomplete in any material particular, shall be liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months.

Claim of person interested to have land acquired or abandoned.

9. If, within nine months after entry has been made on any land under the provisions of section 4, such land shall not have been acquired or abandoned, any person interested in the land or any part thereof may serve notice on the authorizing officer requiring that the acquisition of the land or part thereof be completed or abandoned, and, if within three months thereafter, the acquisition of such land or part

thereof be not completed or abandoned in accordance with the provisions of this Ordinance, the acquisition of the land or part thereof shall be deemed to have been abandoned.

Abandonment of acquisition.

10. (1) At any time before any land has been acquired compulsorily the Governor-General acting in accordance with the advice of the Cabinet may, by notification published in a newspaper of general circulation in Nevis, declare that the intended acquisition of such land is abandoned.

(2) No compensation shall be payable in any case for loss of bargain or for damages for breach of contract.

PART III

APPOINTMENT AND POWERS OF BOARD OF ASSESSMENT

Determination of question by Board of Assessment.

11. (1) All questions and claims relating to the payment of compensation under this Ordinance and to the apportionment of such compensation shall, save as is hereinafter provided, be submitted to a Board of Assessment to be appointed in each case in accordance with the provisions of section 12.

(2) A Board of Assessment shall have full power to assess, award and apportion compensation in such cases, in accordance with the provisions of this Ordinance.

Appointment of Board of Assessment.

12. (1) As soon as it becomes necessary to do so the Governor-General acting in accordance with the advice of the Cabinet shall cause a Board of Assessment (hereinafter referred to as "a Board" or "the Board") to be appointed.

(2) A Board for the purposes of this Ordinance shall in every case be constituted of—

- (a) a judge of the High Court or a person who has held such office or the office of Judge of a Court of unlimited jurisdiction in a Commonwealth country who shall be Chairman of the Board (hereinafter referred to as "the Chairman");
- (b) a member to be appointed by the Governor-General acting in accordance with the advice of the Cabinet;
- (c) a member to be nominated by the owner of the land to be acquired.

(3) Where in any case the Governor-General acting in accordance with the advice of the Cabinet is satisfied that the owner of the land has refused to exercise his right to nominate a member of the Board, or has unreasonably delayed such nomination, or where the persons interested in the land have failed to agree upon such nomination, the Governor-General acting in accordance with the advice of the Cabinet may, by Order in writing, direct the Chairman to proceed with the inquiry notwithstanding that there has been no such nomination by the owner, and in every such case the Board shall be deemed to be lawfully constituted without the presence of such member, and, if there is any difference of opinion as to the amount of

compensation that should be awarded, the decision of the Chairman shall be deemed to be the decision of the Board.

Documents etc., to be forwarded to the Board.

13. (1) Upon the appointment of a Board, or where proceedings are taken before a Magistrate for the determination of any question relating to the payment of compensation, the authorised officer shall forward to the Chairman, or to the Magistrate, as the case may be, those of the following documents and particulars which relate to the acquisition or the intended acquisition of the land, as the case may be—

- (a) a copy of any notification and declaration which has been published in the newspaper;
- (b) a copy of the notice of acquisition;
- (c) a copy of any notice issued or received by him;
- (d) a copy of all statements received by him in compliance with any notice issued by him;
- (e) the names and addresses of the persons whom the authorised officer has reason to believe are interested in the land; and
- (f) a copy of the report required by this section.

(2) The report to be sent to the Board shall state the opinion of the authorised officer, and his reasons for such opinion, upon each of the following matters—

- (a) what is a fair and proper description of the land acquired, including particulars of any building, trees or standing crops thereon;
- (b) the approximate acreage of the land;
- (c) the value of the land for the purposes of compensation under this Ordinance;
- (d) the amount of provisional compensation which should be paid for the land, including any damage payable in respect of entry into possession;
- (e) the apportionment of the provisional compensation among the persons interested in the land, in respect of their interests.

(3) The authorised officer, in assessing the amount of any compensation for the purpose of a report under this section, shall have regard to the rules prescribed by this Ordinance which may and may not be taken into consideration in assessing compensation.

Inquiry by Board.

14. Where a Board has been appointed under this Ordinance, the Board shall hold any inquiry at a place, date and time to be fixed by the Chairman, of which not less than fourteen clear days notice shall be given to the parties concerned, and every such inquiry shall be conducted in public.

Procedure at inquiry.

15. The procedure at an inquiry before a Board, the summoning and remuneration of witnesses for attendance thereat, and all questions incidental to the inquiry shall be

governed by the provisions of the laws for the time being in force relating to civil proceedings in the High Court:

Provided that in the case of any doubt arising on any question of practice and procedure the same may be settled by the Chairman.

Power of entry for purpose of inquiry.

16. The Board, or any person authorised by them, may at any time before, during or after an inquiry under this Ordinance, enter upon and inspect any land for any purpose connected with such inquiry.

Award of Board.

17. (1) At the conclusion of the inquiry the Board shall decide upon the claims for compensation and apportionments submitted to them and shall make an award under the hand of the Chairman who shall cause the same to be filed in the High Court.

(2) The decision of the majority of the members of the Board with respect to the compensation to be paid shall be deemed to be the decision of the Board, and, if all the members of the Board differ, the mean between the amount decided upon by the Chairman and that one of the amounts decided upon by the two other members of the Board which approximates most nearly to the amount decided upon by the Chairman shall be the compensation awarded by the Board.

(3) An appeal lie against a decision of the Board to the Court of Appeal.

PART IV

DETERMINATION OF SMALL CLAIMS FOR COMPENSATION

Procedure where claim for compensation does not exceed certain amounts.

18. (1) Anything in any law to the contrary notwithstanding, in any case in which the compensation claimed does not exceed ten thousand dollars, and in any case in which the compensation claimed does not exceed twenty thousand dollars and, in the latter case, the parties agree in writing to the settlement of the claim by a Magistrate, the amount of the compensation to be paid in any such case shall be determined by a Magistrate.

(2) It shall be lawful for any Magistrate, upon the application of either party with respect to any question of disputed compensation in either of the cases mentioned in subsection (1), to summon the other party to appear before him at a time and place to be named in such summons and to hear and determine such question of disputed compensation.

(3) For the purposes of any proceeding under this section—

- (a) the procedure to be followed before a Magistrate, the summoning and remuneration of witnesses and all questions incidental to such proceedings shall be governed by the law for the time being in force relating to the recovery of claims not exceeding ten thousand dollars before a Magistrate;
- (b) the provisions of sections 16, 19, 20, 21, 22 and 25 shall apply with such verbal alternation (not affecting the substance) as may be necessary to make the same applicable.

(4) An appeal shall lie to the High Court against the determination by a Magistrate under this section.

PART V

PROVISIONS GOVERNING ASSESSMENT OF COMPENSATION, ETC.

Rules for assessment of compensation.

19. (1) Subject to the provisions of this Ordinance, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land—

- (a) The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might have been expected to have realized at a date twelve months prior to the date of the second publication in a newspaper of the declaration under section 3:

Provided that this rule shall not affect the assessment of compensation for any damage sustained by the person interested by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land;

- (b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department;
- (c) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to public health, the amount of that increase shall not be taken into account;
- (d) where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Board is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
- (e) No allowance shall be made on account of—
- (i) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;
 - (ii) any disinclination of the person interested to part with the land acquired;
 - (iii) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action;
 - (iv) any damage, not being in the nature of deprivation of or interference with an easement, servitude or legal right, which, after the time of awarding compensation, is likely to be caused by

or in consequence of the use to which the land acquired will be put:

Provided that nothing therein shall prejudice any claim under this Ordinance for damage subsequently sustained in consequence of the use to which the land acquired is put;

- (v) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will put;
- (vi) any outlay or improvement of such land which has been made, commenced or effected within twelve months before the publication of the declaration under section 3, with the intention of enhancing the compensation to be awarded therefor in the event of such land being acquired for public purposes.

Special rule as to severance.

20. As to severance, compensation may be assessed on the footing that any specified works, crossing, or access agreed to on behalf of the Cabinet shall be erected, provided, and allowed, and any such agreement shall be reduced into writing and be signed by the Chairman and shall be valid and effectual and binding on the parties.

Interest.

21. The Board, in awarding compensation, may add thereto interest at the rate of six per centum per annum, calculated from the date upon which the authorised officer entered into possession of the land acquired until the date of the payment of the compensation awarded by the Board.

Rules as to costs.

22. (1) The authorised officer shall pay to the claimant the reasonable costs incurred by him in or about the preparation and submission of his claim, unless the Chairman considers that the claimant has failed to put forward a proper claim within a reasonable time after the service of the notice under section 7 or that the claim put forward is grossly excessive or that he has been a party to some deceit or fraud in respect of his claim.

(2) Subject to the provisions of subsection (1), where an unconditional offer in writing of any amount as compensation has been made to any claimant by or on behalf of the authorised officer and the sum awarded as compensation does not exceed the amount offered, the Chairman shall order the claimant to bear his own costs and to pay the costs of the authorised officer so far as the costs of the authorised officer were incurred after the offer was made; and, where the claimant has failed to put forward a proper claim in sufficient time to enable the authorised officer to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by or on behalf of the authorised officer at the time when, in the opinion of the Board, a proper claim should have been put forward and the claimant has been awarded a sum not exceeding the amount of such offer.

(3) Subject to the provisions of subsection (1), where a claimant has made an unconditional offer in writing to accept any amount as compensation and has put forward a proper claim in sufficient time to enable the authorised officer to make a proper offer, and the sum awarded is equal to or exceeds that amount, the Chairman shall order the authorised officer to bear his own costs and to pay the costs of the claimant so far as the costs of the claimant were incurred after the offer was made.

(4) Subject to the preceding provisions of this section, the cost shall be in the discretion of the Chairman who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and he may in any case direct such costs to be taxed by the Registrar of the High Court.

(5) The mode of enforcing any order as to costs shall be in the manner prescribed by the practice of the High Court.

(6) Where the Chairman orders the claimant to pay the costs or any part of the costs of the authorised officer, the authorised officer may deduct the amount so payable by the claimant from the amount of any compensation which may be payable to him.

PART VI

MISCELLANEOUS PROVISIONS

Absentee owners.

23. (1) Where there is no person competent to alienate land or to receive or to give a sufficient discharge for any compensation awarded or where any person interested in land, by reason of his absence from Nevis and of his not being represented therein by a duly authorised attorney, does not submit a statement to or appear before the authorised officer as required by section 7, and where such person, after diligent inquiry, cannot be found, the authorised officer may pay the compensation into the High Court to the credit of the person entitled thereunto.

(2) Any compensation paid into the High Court by virtue of this section may, on the subsequent application of any person claiming to be entitled thereto, be paid out to such person on the order of a Judge of the Court.

(3) All moneys paid into the High Court under the provisions of this section which remain unclaimed for twelve years after such payment shall be transferred and paid into the Nevis Island Consolidated Fund, and all claims thereto shall be forever barred.

Compensation to person interested in adjacent land.

24. A person interested in any land which, without any portion thereof being compulsorily acquired, has been injuriously affected by the erection or construction on land compulsorily acquired of any works in respect of which the land was acquired, shall be entitled to compensation in respect of such injurious affection:

Provided that compensation shall not be payable under this section in respect of any injurious affection which, if caused by a private person, would not render such person liable to an action.

Special provisions as to leases.

25. (1) If any land shall be comprised in a lease for a term of years unexpired and part only of such land shall be acquired compulsorily, the rent payable in respect of the land comprised in such lease may, on the application of the lessor or the lessee to a Judge of the High Court, be apportioned between the land acquired and the residue of the land.

(2) After such apportionment the lessee shall, as to all future accruing rent, be liable to pay only so much of the rent as shall be so apportioned in respect of the residue of the land, and as to the residue of the land, and as against the lessee, the

lessor shall have all the same rights and remedies for the recovery of such portion of the rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease, and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to the residue of the land in the same manner as they would have done in case the residue of the land only has been included in the lease.

(3) Where it is shown that the compulsory acquisition of a portion of land comprised in a lease has rendered the residue unsuitable for the purpose for which the land was leased or where in the circumstances the court considers it just to do so the lessee may apply to the High Court to rescind the lease altogether and in such case the Court may rescind the lease and order that the lessee shall only be liable to pay the rent due up to the date of the occurrence of the circumstances on which the rescission order is based.

(4) Where as the result of such rescission of lease the lessor or lessee suffers any loss or injury he shall be entitled to compensation as hereinbefore provided in this Ordinance.

Persons in possession to be deemed owners.

26. Where any question arises touching the title of any person to any land which may be entered upon or acquired for the purposes of this Ordinance, or touching any estate or interest therein, the person having the ostensible possession or enjoyment of the rents and profits of such land shall, for the purposes of this Ordinance, be deemed to be the owner of the same until the contrary is proved.

Fees and expenses of Board.

27. (1) The Chairman shall receive for his services such fee as Cabinet may agree.

(2) Every assessor other than the Chairman shall receive for their services such fee as the Cabinet, after considering any recommendation by the Chairman, may direct.

(3) The Cabinet may also authorise the reimbursement of the travelling and subsistence expenses incurred by the Chairman and members of a Board appointed under this Ordinance.

Conveyancing, etc. Costs to be paid by authorised officer.

28. All reasonable costs, charges, and expenses incurred by the owners of the land or persons interested therein for all conveyances, assurances, transfers and transmissions of any lands purchased or acquired, and of any outstanding terms or interests therein, and of deducing, evidencing and producing title to such lands, terms or interests, and of making out such abstracts and attested copies as the authorised officer may require, shall be paid by the authorised officer.

Payment of compensation etc.

29. All amounts which have been awarded by way of compensation under this Ordinance, including interest and costs to be paid by the authorised officer, and all other costs, charges and expenses which shall be incurred under the authority of this Ordinance, shall be paid out of the Nevis Island Consolidated Fund on the warrant of the Minister of Finance.

Exemption from stamp duty and fees.

30. Except with the approval of the Governor-General acting in accordance with the advice of the Cabinet in any case in which he considers that injustice may otherwise be done, no claim for compensation which may be made under, or for the purposes of this Ordinance, shall be chargeable with any stamp duty, registration or recording fee.

Limitation of time for making claims.

31. Except with the approval of the Governor-General acting in accordance with the advice of the Cabinet in any case in which he considers that injustice may otherwise be done, no claim for compensation which may be made under the provisions of this Ordinance shall be admitted or entertained unless the same shall be made within twelve months after the date on which entry has been made on the land under section 4 or, if a declaration has been made under section 3, within a similar period after the date of the second publication of such declaration.

Assaulting or obstructing officer.

32. If any person—

- (a) assaults or obstructs or aids and abets any person in assaulting or obstructing the authorised officer or any of his agents, assistants or workmen in the execution of his or their duty under this Ordinance; or
- (b) opposes or impedes the lawful occupation or taking of possession of any land under the provisions of this Ordinance,

he shall be liable, on summary conviction, to a fine not exceeding three thousand dollars or to imprisonment with or without hard labour for a term not exceeding three months.
