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Proceedings

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 1        the Justice of the Peace issues the search
 2        warrant.  They then use the search warrant to
 3        seize, I believe, nine horses, a number of
 4        horses, in any event.  They take them into their
 5        custody and, over the course of time, they feed
 6    *   them and take care of them.  Some later die, but
 7        the issue is, with respect to the search warrant,
 8        did they comply with the prerequisites for
 9        obtaining a search warrant?
10        The Crown concedes that the prerequisites
11        for obtaining a search warrant are contained in
12        Section 11 of the Prevention of Cruelty to
13        Animals Act.  It is only after dealing with that
14        section that an agent, namely an S.P.C.A. agent,
15        may then go and apply for a warrant under
16        Sections 13 and 14 of the Act.  As I said, the
17        prerequisite is required that they do those
18        things and without them, they cannot move on to
19        Section 13 and 14.
20            Section 11 reads, briefly:
21
22            "If an authorized agent is of the opinion
23            that an animal is in distress and that the
24            person responsible for the animal a) does
25            not properly take steps that will relieve
26            its distress or b) cannot be found
27            immediately and informed of the animal's
28    *       distress, the authorized agent may, in
29            accordance with Sections 13 and 14, take any
30            action that the authorized agent considers
31            necessary to relieve the animal's distress
32            including, without limitation, taking
33            custody of the animal and arranging for
34            food, water, shelter and veterinary
35            treatment for it."
36
37        I have no doubt here that the officers felt
38        that these animals, or some of them at least,
39        were in distress, in distress to the extent that
40        they felt they were not being properly nourished
41        and that they were extremely thin and, in one or
42        two cases, in some state of emaciation.
43        The issue, as I see it, is whether or not
44        they were required under the Act to make some
45        attempt to contact the owner.  I believe they
46        were.  Under Section 11(b), that is the alternate
47        situation, it says that basically where you
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