

DOMINGO vs. SCHIETEKAT.

*Ord. No. 16 of 1847, § 25.—Detention.**Merely permitting a stray cow to remain on one's farm is not a detention of it within the meaning of the 25th section of Ordinance No. 16 of 1847.*

1880.
March 2.
Domingo vs.
Schietekat.

This was an appeal from a decision of the Resident Magistrate of Cape Town under the Pound Ordinance. The defendant was summoned before the Resident Magistrate of Cape Town for contravening the 25th section of this Ordinance by detaining a cow the property of the plaintiff upon his farm.

It appeared that as plaintiff was bringing some cattle home to Mowbray from Saldanha Bay a certain cow strayed away and was lost. Fourteen months afterwards plaintiff found the cow on defendant's farm, where it had been since its loss. The nearest pound was distant from the defendant's farm about twenty-four miles. There was no evidence that defendant had in any way dealt with or made use of the cow, or that he knew who its owner was. The magistrate dismissed the case.

Cole, Q.C., for applicant.

Leonard, for respondent.

DE VILLIERS, C.J.:—The detention relied upon by the plaintiff is said to consist in the defendant keeping the cow for fourteen months at his place. The evidence only shows that the cow was at the defendant's place, but that alone is not a detention. If she had been herded or milked by the defendant there would have been a detention, but the mere fact that she remained on the farm for fourteen months or even for fourteen years is no evidence of detention. The magistrate's decision is perfectly right, and the appeal must be dismissed with costs.

[Appellant's Attorney, T. J. DICKSON.
Respondent's Attorney, PAUL DE VILLIERS.]
