

**(1966) 10 KL CK 0023**  
**In the High Court Of Kerala**  
**Case No : S.A. of 1966 (Un-numbered)**

Ouseph

APPELLANT

Vs

Narayana Pillai

RESPONDENT

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**Date of Decision :** 17-10-1966

**Acts Referred:**

Kerala Court Fees and Suits Valuation Act, 1959 — Section 52

**Citation :** (1966) KLJ 1113

**Hon'ble Judges :** P.T. Raman Nayar, J

**Bench :** Single Bench

**Advocate :** Manuel T. Paikeday and Leelamma Paikeday, for the Appellant;

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## Judgement

P.T. Raman Nayar, J.—The appellant defendant disputes the whole of the amount awarded to the plaintiff by the decree of the lower appellate court, the decree appealed against, and, by reason of Explanation (3) to section 52 of Kerala Act 10 of 1960, the amount awarded by the lower appellate court for interest accrued from the date of the institution of the suit up to the date of its decree must be deemed to be part of the subject matter of the appeal. The explanation applies whether the appellant is a plaintiff or a defendant. When a defendant appeals his claim is that the decree against him be set aside, and, in the case we are here considering the claim includes also the interest awarded for the period subsequent to the institution of the suit up to the date of the decree appealed against. The relinquishment of interest can only be by a plaintiff does not make the explanation any the less applicable to a defendant's appeal. When a plaintiff in an appeal relinquishes any part of the interest that has been disallowed to him that is not and cannot be the subject matter of his appeal and it is to ensure by way of abundant caution that that is also not taken in by the deeming clause in the explanation that the saving. "except when such interest is relinquished" has been added. As pointed out by me in S. A. 954/65 the statute considered in State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others, had no provision like our explanation making subsequent interest, subject matter of the

appeal.

2. The appellant will amend the valuation in his memorandum of appeal so as to include the amount awarded by the decree appealed against for interest accrued subsequent to the date of the institution of the suit and pay court fee thereon. Else the position will be that there is no appeal so far as that amount is concerned and the decree in so far as it is for that amount will stand whatever the result of this appeal. Time one month.