the conclusion from the evidence that Waman had not been excluded. The result must be that this appeal is allowed and the decree of the trial Court restored. The plaintiff will be entitled to his costs of this appeal and in the appellate Court.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

JETHABHAI GOKALDAS PATEL AND OTHERS (ORIGINAL PETITIONERS), APPELLANTS *v.* PARSHOTAM HAVSA KUMBHAR AND ANOTHER (ORIGINAL OPPONENTS), RESPONDENTS*.

1920. *October* 4.

Probate—Joint will—Will by two persons.

Two persons can make a joint will.

FIRST appeal from the decision of B. C. Kennedy, District Judge of Ahmedabad.

Probate proceedings.

Two persons, Lallu and his wife Shiv, made a joint will a few days before their deaths, Shiv dying first, and Lallu three days later.

The petitioners applied for a probate of the will.

The District Judge held that the will was properly executed, but refused to issue probate on the ground that a will made jointly by two persons was invalid.

The petitioners appealed to the High Court.

G. N. Thakor, for the appellants.

H. V. Divatia, for respondent No. 1.

S. S. Patkar, Government Pleader, for respondent No. 2.

* First Appeal No. 3 of 1920.

1920.

JETHABHAI GOKALDAS v. PARSHOTAM HAVSA.

MACLEOD, C. J.:—The applicants applied for probate of a will purporting to be the last will of two persons Lallu and his wife Shiv. They died of plague, Shiv on the 10th of November 1917 and Lallu on the 13th of November. The learned Judge came to the conclusion that the will so propounded was a genuine document. Although there are circumstances which might lead us to look upon the document with some amount of suspicion, yet the learned Judge who saw the witnesses and heard their evidence came to the conclusion that the will was a genuine document. There is no reason why we should disturb the finding of the trial Judge on a pure question of fact. The learned Judge refused probate on the ground that it was not possible for two persons to make a conjoint will. That admittedly was a wrong view of the law. It has certainly for many years been recognised by the English Courts that a will made by two persons is a perfectly valid will, although no doubt it may lead to various complicated situations the solution of which has to be determined according to the facts of each case. These English authorities were considered in *Minakshi Ammal* v. *Viswanatha Aiyar*[1], where the Court came to the conclusion that a joint will can validly be made by two persons. Here as the two persons who made the conjoint will died within three days of each other no complications would arise, and therefore, there is no reason why probate should not issue to the applicants. The appeal will be allowed and the case must go back for the trial Court to issue probate to the applicants subject to the provisions of the Court-Fees Act. The appellants to get their costs from opponent No. 1 in both Courts. The cross-objections are dismissed with costs.

Appeal allowed.

R. R.

[1] (1909) 33 Mad. 406.