judgment depends on two grounds. First, that in a case of alleged malicious prosecution the privilege of a private prosecutor is less than in a case of judicial slander or in a case of public prosecution. I agree with your Lordship's grounds for rejecting that view. But, second, the Lord Ordinary holds that the law's undoubted requirement, in a case of alleged malicious prosecution where no antecedent or extraneous malice is suggested, of facts and circumstances showing such recklessness in word or deed as will infer malice, can be satisfied by an averment that before the prosecution was raised no adequate investigation was made into the ground of complaint. As I read the pursuer's averments, they do not amount in substance to anything more.

Counsel did not and could not found on the mere fact of an unsuccessful prosecution. Their points were (1) charging an offence in the letter of 4th July 1910 without first asking an explanation. But this element has occurred in many previous cases, and has never been held to affect the question of privilege. It might have been kinder on the part of the reclaimers, as well as more politic in dealing with an old customer, to ask for an explanation before making a charge, but the reclaimers did not forfeit their position of privilege by not doing so.

(2) The reclaimers, it is said, showed malice by failing to give the respondent an opportunity of testing the liquor on which they founded their complaint. But if the respondent was put at a disadvantage thereby it was his own fault. On receipt of the letter of 4th July, had he asked for a sample and been refused it, there might have been some ground for this complaint. But he made no such request.

(3) The reclaimers are charged with failure to make "adequate investigation" before writing the letter and instituting the prosecution. Seeing the hopelessness of this point as a fact or circumstance inferring malice, the respondent's counsel tried to construe the record as in substance charging that no antecedent investigation whatever was made. In view (*a*) of what is averred by the respondent, (*b*) what is not denied by him, and (*c*) his failure to suggest what the reclaimers should have done in the way of tests, I think this attempt failed.

I may add that the respondent's averments in cond. 7, as well as much of his counsel's argument, proceeded on the mistaken view that the reclaimers' complaint against him was that he was supplying stout not of their manufacture. That charge was involved in their complaint, but the essence of the charge was that he was supplying stout not of the quality of their manufacture.

(4) Respondents' counsel maintained, as a fact inferring malice on the part of the reclaimers, that they made their charge and instituted their prosecution against the respondent for selling stout as theirs which was under their standard quality, when in point of fact, to their own knowledge, they had no standard of quality whatever. Such an averment might well have been relevant as a fact inferring malice. It would have involved knowledge on the reclaimers' part that no prosecution properly defended could possibly succeed. Obviously such an improbable averment would require very clear statement. I shall only say that I am unable to find it on record, and no motion was made for amendment.

On the whole matter, I am unable to find any averments by the respondent inconsistent with the reclaimers' good faith, and with their having had probable cause for writing the letter and instituting and carrying through the prosecution complained of. This being a privileged case, the respondent is therefore not entitled to proceed with the action, and the action must be dismissed.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for Pursuer (Respondent) — Horne, K.C.—Macquisten. Agents—Alexander Morison & Company, W.S.

Counsel for Defenders (Reclaimers)—G. Watt, K.C.—Munro, K.C.—Macmillan. Agents—Macpherson & Mackay, S.S.C.

HOUSE OF LORDS.

Monday, March 11.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord Atkinson, Lord Shaw, and Lord Robson, with Nautical Assessors.)

ALEXANDER STEPHEN & SONS, LIMITED *v.* ALLAN LINE STEAMSHIP COMPANY, LIMITED.

(In the Court of Session, May 17, 1911, 48 S.L.R. 745, and 1911, S.C. 836.)

Ship — Collision — Pilot—Fault — Onus of Proof — Presumptions — Merchant Shipping Act, 1894 (57 *and* 58 *Vict. cap.* 60), *sec.* 633.

Circumstances in which, *approving* the judgment of the Lord President in which he deals with the *presumption of fault* when a collision occurs between a moving and a stationary vessel, and the necessity of averring and proving *specific fault on the part of a compulsory pilot* in order to obtain the benefit of section 633 of the Merchant Shipping Act 1894, the defenders were assoilzied in an action of damages arising out of a collision between their vessel, a moving vessel under a compulsory pilot, and the pursuers' vessel, a stationary vessel moored to a wharf.

This case is reported *ante ut supra.*

The pursuers, Alexander Stephen & Sons, Limited, appealed to the House of Lords.

At the conclusion of appellants' argument—

LORD CHANCELLOR (LOREBURN)—I do not think it is necessary to enter at all upon the interesting details of this appeal, which is one wholly relating to matter of fact. The learned Judge who heard the witnesses takes one view, and in substance I think the same view is taken by the Lord President, of what took place on the occasion of this collision. I myself agree with the views which have been expressed, and I really do not think that any good purpose would be served by entering upon a consideration of the various arguments that have been adduced by one side or the other. I am content to accept the judgment of the Lord President.

I think the appeal ought to be dismissed, and I move your Lordships accordingly.

LORD MACNAGHTEN—I agree.

LORD ATKINSON—I concur.

LORD SHAW—I desire to say that so far as the form of process goes in this case, I do not myself see any occasion for the change of the interlocutor which occurred in the Inner House. It appears to me that the finding of Lord Dewar, which was recalled by the First Division, was completely justified by the clear and conclusive narrative which he gave in stating his opinion. The change of form which has occurred did not arise, as I observe, from any change of view in the First Division as to the fault or negligence of the pilot. The Division, or at least the majority thereof, came back at the conclusion of the case to exactly the position in which Lord Dewar left it. I concur in the course proposed.

LORD ROBSON—In this case it has been found by two Courts in Scotland that the fault lay wholly with the pilot, and I think to that finding no objection can be taken. Some difficulty no doubt arises on the evidence as to the look-out kept by the ship, but it cannot be said that the pilot was without warning or information as to the danger which he realised too late. When the vessel got alongside the "Koombana," the captain of the "Buenos Ayrean" drew the pilot's attention to the boom of the "Koombana," so that he knew he was very near the wharf and any vessels that might be there, and he ought to have taken immediate steps to get more into mid-channel so as to clear any vessel that might be lying further on. He did not do so. That error caused the accident, and I think it cannot be said that the evidence as to the look-out was sufficient to make out fault against the defenders.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Pursuers (Appellants)—Laing, K.C.—Horne, K.C. Agents—Maclay, Murray, & Spens, Glasgow—J. & J. Ross, W.S., Edinburgh—Thomas Cooper & Company, London.

Counsel for the Defenders (Respondents)—Butler Aspinall, K.C.—Roberton Dunlop. Agents—Wilson, Caldwell, & Tait, Glasgow—Webster, Will, & Company, W.S., Edinburgh—Pritchard & Sons, London.

Tuesday, March 12.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord Atkinson, Lord Shaw, and Lord Robson.)

HARGREAVE *v.* HAUGHEAD COAL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (8 *Edw. VII, cap.* 58), *Schedule I* (16)—*Ending of Compensation—Accident Likely to Affect in Future the Workman's Wage-Earning Capacity.*

A miner was injured by accident arising out of and in the course of his employment, and as the result lost one eye. His employers for a time paid him compensation for total incapacity. They applied for review of the compensation, and the arbiter ended it, finding that the miner's incapacity had ceased. He also found that the miner had incipient cataract in the other eye, that incapacity would result gradually from the cataract, and that the cataract was not due to the accident.

Held, affirming judgment of the Second Division, that the arbiter was right in ending the compensation.

Henry Hargreave, coal miner, Tollcross, Glasgow, *appellant*, presented a Stated Case under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) against a decision of the Sheriff-Substitute (MILLAR CRAIG) at Airdrie, whereby in an application at the instance of the Haughhead Coal Company, Limited, *respondents*, the compensation paid by them to him was ended as at 15th September 1910.

The Case stated—"The case was heard before me on 13th February 1911, when the following *facts* were admitted or proved—1. That on 18th February 1910 the appellant sustained injury to his right eye by an accident arising out of and in the course of his employment as a miner with the respondents in their Broomhouse Colliery. 2. That in consequence of the injury the eye had to be removed. 3. That the appellant received compensation from the respondents in respect of total incapacity from the date of the accident till 15th September 1910, at the rate of 13s. 9d. per week. 4. That on 12th November 1910 the appellant's incapacity had ceased and he was fit to resume his former work as a miner. 5. That the appellant had on 12th November 1910, and has now, incipient cataract in his left eye. 6. That incapacity for his work will result gradually from the cataract. 7. That the cataract in the left eye is not due to the accident. 8. That it is admitted that the appellant's condition was the same at 15th September as at 12th