The pleas of the crown.

We have seen that there were a certain number of cases jurisdiction over which was regarded as peculiarly within the province of the crown.[1] These cases tend to increase in number and variety under the strong government of Henry II; and in the jury of presentment the crown had an effective machinery for gathering information as to the breaches of the law which it was interested in suppressing.[2] We have seen that the list of things about which the king wishes to be informed can, at the beginning of the thirteenth century, be grouped under three heads—the proprietary rights of the crown, the misdoings and negligences of officials and communities, and serious crimes. These matters form the pleas of the crown.[3]

For information upon the first two of these heads the crown relied on the presentments of the juries of the hundred. For information upon the third the crown relied partly upon the same source, and in time comes to rely in theory[4] entirely upon it. But in the twelfth and thirteenth centuries and for some time to come the crown will rely as much upon the appeal of the private accuser as upon the presentment of a jury. The appeal of the private accuser must have appeared the obvious beginning of criminal procedure to a society which remembered the wergild and perhaps the blood fued;[5] and it can hardly be dispensed with by a government which is as yet new, which has no force of police, no law-abiding habit to assist it.

As yet, therefore, the appeal by the private accuser holds an important place in criminal procedure. The law is strong enough to suppress private war; but the number of appeals would seem to show that the usual consequence of this suppression followed—the prosecution of feuds was transferred to the law courts.[6] Angry litigants preferred to settle purely civil causes of action by criminal proceedings.[7] We have in 1203 a series of appeals which Maitland thinks turned upon a dispute to forestal rights;[8] and in 1214 a still longer series which

[1] Above 48-49.
[2] Vol. i 321-322.
[3] Ibid 269, 271; Select Pleas of the Crown (S.S.) nos. 167, 168.
[4] In theory, because, though offences are presented by the grand jury, that body simply acts in most cases upon the information and in accordance with the opinion of the magistrate by whom the prisoner has been committed for trial. As to the growth of this process see vol. i 295-297
[5] Above 44-46.
[6] Vol. i 506-507.
[7] Rot. Cur. Reg. (R.C.) i 38; that the appeal was often used simply to gratify revenge is clear from § 36 of Magna Carta, vol. i 57; for the later history of the appeal see below 361-364.
[8] Select Pleas of the Crown (S.S.) no. 88.

probably originated in a difference of opinion between a lord and the heir of a deceased tenant as to the lord's rights.[1] In another case the plaintiff tried to make the proceedings taken in a civil action the ground of an appeal.[2] But because appeals were pleas of the crown the judges kept a watchful eye upon them. They were sharp to note any contradictions in the tale told by the appellor,[3] or any technical faults in the statement of the case;[4] and they took evidence as to the conduct of the parties.[5] In fact the appeal, so controlled, is the bridge between the earlier law, when the appeal was the substitute for the blood feud, and the later law, when criminal proceedings are taken by the state. We can see the beginnings of the later law in the use which is made of the jury of presentment. It is used, not only to bring suspected persons before the court, but also to assist the court in coming to a decision as to whether or no an appeal shall be quashed.[6] The jury was strictly controlled by the court;[7] and, as so controlled, its presentment was clearly a better means of arriving at the truth than the appeal of the private accuser. With the growth of the former procedure and the decay of the latter, the part played by the state in suppressing crime will be emphasized. We shall be approaching nearer to the modern distinction between criminal law and the law of tort, which consists in the fact that the sanctions of the former are enforced at the discretion of the sovereign.

But the fact that our criminal law has grown up simply as a branch of the pleas of the crown will give rise to many difficulties in interpreting the word "criminal." When that word has come to mean in popular phraseology, and sometimes in the phraseology of the statute book, a form of serious wrongdoing, when the procedure to punish such serious wrongdoing has become a distinct branch of procedure with its own special

[1] Select Pleas of the Crown (S.S.) no. 115; cp. no. 105.

[2] Ibid no. 159, "De eodem facto fuit assisa capta et dampnum datum, consideratum est quod nullum est appellum inter eos;" cp. ibid no. 35, "Appellum de pratis pastis non pertinet ad coronam regis."

[3] Ibid no. 97, "Warinus postea interrogatus ubi ipse Alanus obiit dixit quod obiit apud Londoniam. Unde quum prius dixit quod vidit eum interfici apud Neuha, et postea confessus est ipsum obiisse apud Londoniam, Edwardus sit quietus, et Warinus in misericordia."

[4] Ibid nos. 19, 26, 33, 54, 67, 136, 138, 165.

[5] Ibid nos. 19, 24, 26, 39, 60.

[6] Ibid nos. 23, 39. In no. 42 the parties put themselves upon the wapentake, as to the correctness of the facts alleged; after hearing what the wapentake, the county, and the coroners have to say the court quashes the appeal.

[7] Ibid nos. 15, 38, 67, 75; the record of the last case is as follows: "Robertus Albus occidit Walterum de Hugeford et fugit. Et juratores dicunt quod utlagatus fuit pro morte illa, et comitatus et coronatores dicunt quod non fuit utlagatus. . . . Et quia juratores non possunt contradicere comitatui et coronatoribus ideo sunt in misericordia."