

and easy; but, when drawn out into actual service, they are subject to the rigours of martial law, as necessary to keep them in order. This is the constitutional security, which our laws have provided for the public peace, and for protecting the realm against foreign or domestic violence; and which the statutesⁿ declare is essentially necessary to the safety and prosperity of the kingdom.

WHEN the nation was engaged in war, more veteran troops and more regular discipline were esteemed to be necessary, than could be expected from a mere militia. And therefore at such times more rigorous methods were put in use for the raising of armies and the due regulation and discipline of the soldiery: which are to be looked upon only as temporary excrescences bred out of the distemper of the state, and not as any part of the permanent and perpetual laws of the kingdom. For martial law, which is built upon no settled principles, but is entirely arbitrary in its decisions, is, as sir Matthew Hale observes^o, in truth and reality no law, but something indulged, rather than allowed as a law: the necessity of order and discipline in an army is the only thing which can give it countenance; and therefore it ought not to be permitted in time of peace, when the king's courts are open for all persons to receive justice according to the laws of the land. Wherefore Thomas earl of Lancaster being condemned at Pontefract, 15 Edw. II. by martial law, his attainder was reversed 1 Edw. III. because it was done in time of peace^p. And it is laid down^q, that if a lieutenant, or other, that hath commission of martial authority, doth in time of peace hang or otherwise execute any man by colour of martial law, this is murder; for it is against *magna carta*^r. And the petition of right^s enacts, that no soldier shall be quartered on the subject without his own consent^t; and that no commission shall issue to proceed within this land according to martial law. And whereas, after the restoration, king

ⁿ 30 Geo. II. c. 25, &c.

^o Hist. C. L. c. 2.

^p 2 Brad. Append. 59.

^q 3 Inst. 52.

^r cap. 29.

^s 3 Car. I. See also stat. 31 Car. II. c. 1.

^t Thus, in Poland, no soldier can be quartered upon the gentry, the only freemen in that republic. Mod. Univ. Hist. xxxiv. 23.