

granted, for that Crimes should be left to be tried in the Justice court Act 76 Parl. ii. J. 6 or before the ordinary Criminal Judge Competent.

In old time courts were held in Scotland upon Heiglow or Domestic fouds, ^{called courts of George} which were thereafter Discontinued under the pain of slaughter Roff and Wifingation. The Kings Lieges and his Authority Act 70 Parl. 8 J. 31

Epit. 4.

of courts Martial.

Among the old Romans the *profecti praetorio* for several ages, and afterward the *Magistri Militum*, were the Military Judges; who were at long the allowed to delegate such causes as they thought fit to the officers of the respective Legions. l. fin. C. de re Milit. It has found impracticable and hard to impossible, for some men to discuss all Military causes that incessantly come before them. Whence the trial of Soldiers was called *Quaestorium d. l. fin. 53.* For that *Dies Coppiarum* were Judges therein. It is not improbable, that there was space in the camp set apart for this Court l. 12 ff. *Re Milit. l. 16 si C. de Croq. Milit. Annon. Norwich. ment. In Vogel. de re Milit. lib. 1 cap. 20.* But whether it was on the head of the Army *Subaltos*, as some will have it, or a square place within the camp *Acord* to others, it is not very material for us to determine. Only in the General the Judges were strictly enjoined to keep within the bounds of their jurisdiction, with drawing to their Cognizance what did not belong to them d. l. 12 52 ff. *de re Militari.*

The Modern Military Judges go under the name of a Council Martial or court of war, which, tho by common gross mistake generally reputed the same with a Council of war, doth vastly differ from it. For a Council of war is a Meeting of officers called

only for advice concerning the Management of the War: Where as a court Martial is a Military Tribunal for hearing and Determining private causes.

By the Custom of other European Nations, a court Martial is the judge of all Military crimes, such as Mutiny Deserting the Colours, Resisting officers &c. Committed by Soldiers. But these may be tried by the Judges ordinary for Common Crimes, ^{where any person as well as a Soldier may be guilty of} viz. Murder, adultery, fire-raising &c. unless committed in the Camp, or upon a March, or in winter quarters, *Verd de jure Militari cap. 7 n. 9. Christian Socis. vol. 2 Socis. 228. Carpzov. Jurisprud. Saxon. part 4 Conf. 9 T. 11.* being it is the crime, and not the person that determines the jurisdiction. This is conformable to the Civil law l. 9 ff. *de Custod. Reor. junct. l. 2 pr. l. 3 pr. ff. de jure Milit. l. 11. ff. de Auct. l. 1. ff. de Exh. l. 1 transmissio* l. 1 ff. *de offic. Magist. Milit. l. 6 C. de Jurisdic. Omn. Judic. l. 1* is not disagreeable to what hath been the Custom of Scotland, where Soldiers have been tried before the court of Justiciary for Murder 6 January 1662 French Yeats & Beate *Menzies observ. on act 75 Parl. ii. J. 6.* And for Crimes purely Military have been tried by a court Martial, *Menzies Curm. part. 2 Epit. 16 5183.*

But as in England before the Union of the two Crowns, so now in Britain since, there is no constant law for raising or keeping up a standing Army, or for holding courts Martial in time of peace. Whereby the Constitution of the Kingdom no Man may be forejudged of life or limb or subjected to any kind of punishment by Marshal law, or in any other Manner than by the Judgment of his peers, *Magna Charta cap. 29. C. 29. Inst. 52.* However the Situation of affairs and Circumstances of the Government often requiring a standing Army to be kept up in time of peace, and it being requisite for maintaining such forces in their duty that an Exact Discipline be observed, and that such