

be of the nature already suggested, yet it might be allowed  
 that it was anciently, as well as at this day, more generally  
 understood to denote a Milt or fine for a Military ten-  
 nants Defect of service; Vid. Madoc ibid. 436. 439. 454. 457.  
 458. 462. For tho' it is very certain, that all tenants by  
 Knight service were originally bound in all events either  
 by themselves, or by some other person, actually to do  
 the services of their tenures, and the non performance  
 thereof was a forfeiture of the Goods or tenures: yet as  
 the general forfeitures abated, and Lords grew just in  
 who then they were served by their own tenants or by  
 others, such forfeitures were easily suspended with, and  
 pecuniary Compensations, such possibly as might barely  
 enable the Lord to hire others to do the services of  
 their tenures were commonly accepted; in so much  
 that most tenants chose rather by these means to  
 satisfy their Lords, than to do their services in person  
 or to provide others thereto do them. The Kings of England  
 anciently taking Advantage of, or perhaps complying  
 with the humour of their tenants which had made their  
 actual service doubtful and precarious, did sometimes  
 upon occasions of war, assess a moderate sum upon each  
 Knight fee, as scutage or Esuage, by means whereof  
 they might be enabled in all events to provide soldi-  
 ers or stipendiaries, to do the services of their tenants.  
 But this general Esuage or Commutation, or Equiva-  
 lent for service, and also every Esuage for Particular Defect  
 of service was afterwards in the time of King John thought  
 fit to be imposed and assessed per Communitatem  
 Regni by the Parliament, and not at the Kings Will; or  
 by any other, which (says the Doctor Books, just 72 a) was by  
 the Common Law. But Littleton (sect. 97) who never  
 went beyond himself speaks more doubtfully of the  
 matter. This was equitably extended to all Mesne Lords  
 and their tenants, so as to oblige them likewise to  
 pay and accept Esuage at the Rates assessed, Littleton  
 100. 101. Esuage thus to be assessed, being now the only  
 penalty for Defect of service, many Lords by agree-  
 ment

19.  
 ments between them and their tenants, fixed this uncertain  
 Esuage to a certain sum, that should be paid as often as  
 Esuage should be granted, without regard to the Rate that  
 should be fixed or assessed by the Parliament. Esuage thus  
 ascertained was called Esuage certain, and because it did in  
 Effect discharge the tenant from all Military service,  
 the persons who held by such Esuage, were looked upon  
 as socage tenants, and were no longer esteemed as tenants  
 by Knight service, Littleton. sect. 96. 120. Co. lib. 1. Just. 87 a. Fe-  
 nures by Knight service are now abolished by the Stat. 12  
 Car. 2. cap. 24 and turned into Common socage. Therefore I shall  
 not distinctly consider the several properties kinds and so-  
 verities of tenures treated of by the English Lawyers Un-  
 der this head, but shall barely Enquire how far tenures  
 in socage may be supposed even at this Day to retain  
 in England the Nature of Feodes.

Tenures in socage, are holdings by any certain Con-  
 ventional services that are not Military Littleton. sect. 117.  
 The word socage (Socagium) according to the Opinion of  
 the English Common Lawyers (Littleton. sect. 119. §. 1. Stat. 3.  
 cap. 16. Co. lib. 1. Just. 86. b.) is derived from Soc a plough from  
 the Name or Nature of the service anciently performed upon  
 such tenures, by which tenants held their lands to plough  
 the land of their Lords with their own plough, and to other  
 services of his bandry at their own charge. But all the  
 English fees or holdings, whether they be frank or  
 emphyteuticary, burgage or Gavel kind, (the burgage and  
 Gavel kind have many Qualities different from common  
 socage) do not fall under the Notion of socage tenures, which  
 they vary in point of service, succession and the like,  
 as improper Feodes, do. Never the less retain the Nature of  
 Feodes, in as much as they are held of some Lord or superior  
 or by fealty, and usually by some or certain service or  
 Acknowledgement, and in as much as they yield and pay  
 Relief, and May & Cheats. The English Lawyers divide  
 these tenures according to their Duration, or what  
 they call the Quantity of Estate, into Estates in fee