

GOVERNMENT HOUSE, VICTORIA,
Vancouver's Island, October 14, 1858.

SIR: With reference to the communication which I had the honor of addressing you by his excellency's instructions on the 8th instant, I am directed by the governor to transmit for your information copy of a communication received from the crown solicitor of Vancouver's Island, showing that, in his opinion, no power is vested in the executive to cause counsel from among the members of the American bar resident in Victoria to be assigned to parties accused of offences and awaiting trial in the courts of Vancouver's Island.

The governor further desires me to state to you that the courts have no objection whatever to allow persons in custody to receive assistance from members of the American bar, or others who may be willing to aid them in preparing for their defence.

I have the honor to be, sir, your obedient servant,
RICHARD GOLLEDGE,
Secretary.

JOHN NUGENT, Esq.,
Special Agent for the United States.

*Copy of a letter from George Pearkes, esq., crown solicitor and attorney,
to Governor Douglas, dated Saturday morning, October 10, 1858.*

SIR: The undersigned has the honor to acknowledge the receipt of your communication of the 5th instant, accompanied by a communication of Mr. Nugent, special agent of the United States.

To the question propounded by your excellency as to the constitutional power of the executive to cause counsel from among the members of the American bar resident at Victoria to persons accused of crime and awaiting trial in the courts of this colony, it is submitted:

First. The organization of the judiciary is separate and distinct from that of the executive; and the appointment of any officer to discharge functions pertaining to the judiciary not specified by law would be an encroachment on the part of the executive.

Second. Barristers, attorneys, and solicitors, are made by law officers of the judiciary, having rights and privileges incident to such office, and amenable and punishable for misconduct after call and during enrollment.

Third. By act of parliament and order in council organizing the judiciary of this colony it is expressly provided that the chief justice shall make rules for the admission of barristers, attorneys, and solicitors to practice in the respective courts of this colony.

The order referred to gives no authority, even to the judiciary, to make assignment of counsel to the members of the bar of a foreign State, but expressly prohibits the appearance of any other person to act in that capacity, save those so enumerated.

Until recently, prisoners charged with felony were not allowed to make their defence by counsel, and this not until the 6th and 7th of