

Rockingham, }  
June 24, 1942. } No. 3340

ROSE MARIE BODEAU v. CHARLES BODEAU, JR.

*Sewall, Varney & Hartnett, and Henry M. Fuller, for the petitioner.*

*J. Leonard Sweeney, for the defendant, filed no brief.*

BRANCH, J. The statute in question (P. L., c. 288, s. 9), provides as follows: "9. PROPERTY, etc. If a woman, the wife of an alien or of a citizen of another state, has resided in this state six months successively, separate from her husband, she may acquire and hold real and personal estate, and convey it the same as if she were sole and unmarried, and shall have the exclusive care, custody and guardianship of her minor children living with her in the state; . . ." Under this statute we have held that "it does not give the mother an absolute right of custody. Her right, in the absence of judicial action, is *prima facie* only, but it is not to be defeated by judicial action unless it is found that she is an unsuitable person for the trust. In the absence of such a finding, she is entitled to custody by force of the statute." *Sheehy v. Sheehy*, 88 N. H. 223, 228. It is the purpose of this proceeding to confirm by judicial action the petitioner's *prima facie* right to custody and guardianship.

The contention of the defendant that the statute requires that

the child, as well as the wife, shall have resided in this state for six months before the petition is filed, finds no support in the language or the context of the statute. The section above quoted finds its place in a subdivision headed, RIGHTS OF RESIDENT WIFE OF A NON-RESIDENT. It contains no reference to the residence of children and its meaning is not open to doubt. It is no part of the judicial function to add to a statute by interpretation, provisions not expressed therein. *State v. Richardson*, decided this day. (*ante*, 178) The master correctly ruled "that the requirement of residence for six months within the State as set forth in that statute applies only to the residence of the wife."

In accordance with the stipulation of the parties, the order is

*Decree in accordance with the master's report.*

All concurred.

Belknap, }  
June 24, 1942. } No. 3330

VIOLET R. ARCHIBALD, *Adm'x of the Estate of Everett C. Archibald*  
*v. BOSTON & MAINE RAILROAD.*

EDNA O. SWAIN, *Adm'x of the Estate of Stephen C. Swain, Sr.*  
*v. SAME.*

EDNA O. SWAIN, *Adm'x of the Estate of Stephen C. Swain, Jr.*  
*v. SAME.*