PATERNITY AND LIKENESS.

In a recent case of *Descheneaux & Lizotte*, before the Court of Appeal at Montreal, in which it was sought to establish that the appellant was the father of a child, one of the points urged in support of the alleged paternity was a pretended resemblance. The Court attached very slight importance to this point. A similar ground was urged in a case of *Hanawalt* v. *State* (24 N. W. Rep. 489), decided by the Wisconsin Supreme Court, on the 22nd of September last, in which the Court, after reviewing the authorities, came to the conclusion that "in bastardy proceedings the bastard child may not be exhibited to the jury for the purpose of showing, by its likeness to defendant, that it is his child. The Court said: "Upon the question of the propriety of exhibiting the child to the jury as evidence in cases involving its paternity, the decisions of the courts are not in harmony. In North Carolina the Supreme Court of that State held that such exhibitions may properly be made. See *State* v. *Woodruff*, 67 N. C. 89. The same was held by the Supreme Court of Iowa in *State* v. *Smith*, 54 Iowa, 104; S. C. 37 Am. Rep. 192. In this last case the child was over two years old; but in the case of *State* v. *Danforth*, 48 Iowa, 43; S. C., 30 Am. Rep. 387, the same court held it was improper to exhibit to the jury a child only three months old. In *Eddy* v. *Gray*, 4 Allen, 435; *Jones* v. *Jones*, 45 Md. 144; *Keniston* v. *Rowe*, 16 Me. 38, the court hold that testimony of witnesses that the child looks like or resembles in appearance the person charged to be the father is not admissible, and in *Reitz* v. *State*, 33 Ind. 187, and *Risk* v. *State*, 19 id, 152, it was held error to allow the prosecution to give the child in evidence so that the jury might compare it with the defendant who was present in court. In the *Douglas* case Lord Mansfield is reported as saying: 'I have always considered likeness as an argument of a child's being the son of a parent; and the rather as the distinction between individuals in the human species is more discernible than in other animals. A man may survey ten thousand people before he sees two faces perfectly alike, and in an army of a hundred thousand men every one may be known from another. If there should be a likeness of feature, there may be a discriminancy of voice, a difference in the gestures, the smile, and various other things, whereas a family likeness runs generally through all these, for in everything there is a resemblance, as of features, size, attitude and action.' See Wills on Circumstantial Evidence. p. 123. This author, on the next page, says that in a Scotch case, when the question was who was the father of a certain woman, an allegation that she had a strong resemblance in the features of the face to one of the tenants of the alleged father was held not to be relevant as being too much a matter of fancy and of opinion to form a material article of evidence. In the case of *Jones* v. *Jones*, *supra*, the learned judge who wrote the opinion refers to the language used by Lord Mansfield in the *Douglas* case, and disapproves of it as authority, and thinks it has not been followed as a precedent in the English courts, and he quotes with approval the language of Justice Heath in the case of *Day* v. *Day*, decided in 1797, in which the learned judge stated to the jury 'that resemblance is frequently exceedingly fanciful, and he therefore cautioned the jury as to the manner of considering such evidence.' The learned judge, in the case of *Jones* v. *Jones*, *supra*, in disapproving of the language used by Lord Mansfield, says: 'We all know that nothing is more notional in the great majority of cases. What is taken as a resemblance by one is not perceived by another with equal knowledge of the parties between whom the resemblance is supposed to exist.' It should be remembered that in the *Douglas* case, and the Maryland case, the question of parentage was as to a person who was full grown. So that if there is anything certain in family likeness it would be fully developed, and if in any case such claimed likeness could be considered by a jury in determining the question of parentage, it would be in a case of that kind. In the case of *Jones* v. *Jones* the court seemed to be of the opinion that 'when the parties are before the jury, and they can make the comparison for themselves, whatever resemblance is discovered may be a circumstance, in connection with others, to be considered.' In any case this kind of evidence is inherently unsatisfactory, as it is a matter of general knowledge that different persons, with equal opportunities of observa-