

should have been overruled and the city of Los Angeles put upon its answer.

For the reasons herein stated, the judgment of the Supreme Court of California is reversed and the cause remanded to that court for further proceedings not in conflict with this opinion.

DALY v. ELTON.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 108. Argued October 11, 12, 1904.—Decided November 14, 1904.

Decided on authority of *Dobbins v. Los Angeles*, ante, p. 223.

THE facts are stated in the opinion.

Mr. Lynn Helm and *Mr. Edward C. Bailey*, with whom *Mr. Henry T. Lee*, *Mr. J. R. Scott* and *Mr. Charles W. Chase* were on the brief, for plaintiff in error.

Mr. W. B. Mathews, with whom *Mr. Herbert J. Goudge* was on the brief, for defendant in error.¹

MR. JUSTICE DAY delivered the opinion of the court.

This case is practically determined by views expressed in *Dobbins v. The City of Los Angeles*, just decided. It was a petition for a writ of *habeas corpus* to discharge Daly from custody, in a prosecution under the ordinance under consideration in the *Dobbins* case. The prayer of the petition was denied and the writ discharged. *In re Daly*, 139 California,

¹ This case was argued simultaneously with the preceding case and for abstracts of arguments, see ante, p. 226.

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216. Under the California practice, in the absence of issue joined the allegations of the petition are taken as true and the facts alleged therein are taken as admitted. *In re Smith*, 77 Pac. Rep. 180. The petition made allegations attacking the ordinance which, if true, would render it invalid for the reasons stated in the *Dobbins* case, *supra*, and the petitioner upon the record made should have been discharged from custody.

It is therefore ordered that the judgment of the Supreme Court of California be reversed and the cause remanded for further proceedings not inconsistent with the views announced in the Dobbins case, supra.

BRADFORD v. SOUTHERN RAILWAY COMPANY.

CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SIXTH CIRCUIT.

No. 151. Submitted October 19, 1904.—Decided November 28, 1904.

The act of July 20, 1892, providing when a plaintiff may sue as a poor person, does not apply to appellate proceedings.
Federal appellate courts have no power to permit prosecutions *in forma pauperis* in the absence of a statute.

THIS case is brought here on the following certificate:

“This was an action of tort. The plaintiff was a citizen of Tennessee, and the defendant a corporation organized under the laws of Virginia. The jurisdiction of the court below was wholly dependent upon diversity of citizenship. There was a jury and verdict against the plaintiff in error and a judgment accordingly.

“The plaintiff in error sued out this writ of error, and has lodged with the clerk of this court, within the time required by law, a full transcript of the record in the court below. The