situation has been well summarized by the Supreme Court of Kansas: "The doctrine is a rule of law, but the facts to which it applies must be found by the jury." *Tartar v. Missouri-Kansas-Texas Railroad Co.* (1925) 119 Kan. 365, 239 Pac. 754.

Under the peculiar situation existing in the instant case where there was conflicting testimony as to the existence of the facts necessary to impose the duty of watchfulness, it is proper to say that there must be a finding by the jury as to the facts which existed at the time. But this finding should not be obtained by submitting the bare question of the presence of the duty to the jury, but rather by instructing them that they must find certain specific facts to have existed before they can apply the instruction based upon the humanitarian doctrine. Any other ruling will result in the courts still further weakening their slight control over the actions of juries in personal injury cases. G. W. S., '33.

NEGLIGENCE—PROXIMATE CAUSE—SPREADING FIRES.—In line with its traditional practical viewpoint, the Court of Appeals of New York early adopted a strict attitude toward liability for the spread of fire negligently set, applying a closer test of proximate causation than any other jurisdiction. The case of *Ryan v. New York Central Railroad Co.* (1866) 35 N. Y. 210, is a forerunner of the ultimate New York position. In that case the defendant railroad company negligently set fire to one of its sheds, the flames spreading to and destroying the house of the plaintiff, situated upon adjoining land, 130 feet distant from the sheds. The court, in declaring that there was no cause of action, used language significant in understanding the present unique New York position upon the point: "Each man, in a commercial community, runs the hazard of his neighbor's conduct, and each, by insurance against such hazards, is enabled to obtain a reasonable security against loss. To neglect such precaution and to call upon his neighbor upon whose premises a fire originated to indemnify him instead, would be to award a punishment quite beyond the offense committed." The decision also pointed out that the principle of subrogation would entitle insurance companies to the benefit of all claims of insured property owners, a situation which, in an extensive fire, would produce claims beyond possibility of adequate payment, at least without the bankruptcy of the merely negligent offender.

The ultimate New York rule, however, is somewhat less stringent than the doctrine of the *Ryan* case. It was laid down definitely in *Hoffman v. King* (1899) 160 N. Y. 618, 55 N. E. 401. Under it the negligent fire is the proximate cause only of damage to property immediately adjoining the premises of the defendant, with no liability for the results of the fire's spreading across intervening lands to lands not adjoining. *Moore v. Van Beuran* (1925) 240 N. Y. 673, 148 N. E. 753; *Rose v. Pennsylvania Railroad Co.* (1923) 236 N. Y. 568, 142 N. E. 287; *Moch Co. v. Rensselaer Water Co.* (1928) 247 N. Y. 160, 59 N. E. 896; *Daugherty v. King* (1901) 165 N. Y. 657, 59 N. E. 1121.

A problem testing the integrity of the New York doctrine arose in *Homac Corporation v. Sun Oil Co.* (1932) 258 N. Y. 462, 180 N. E. 172. Plaintiff corporation owned buildings in the city of Syracuse, situated diagonally across a 66 foot street from the defendant's storage tanks. Title to the soil of the street was in the city of Syracuse. Fire started in one of the tanks through negligence of the defendant, and sparks, flames, or intense heat ignited one of plaintiff's buildings across the street, from which the fire was communicated to others, causing their destruction. The defendant appealed from a judgment in favor of the plaintiff and its insurance carriers, contending that under the established rule of the State its negligence was not the proximate cause of damage to other than abutting owners. It was held that since the bare street, no part of which was touched by fire, provided no element of causation, the defendant's fire might be said to "immediately precede" the plaintiff's fire and that liability might properly attach.

The same result would have been reached in any other jurisdiction without difficulty. The prevailing view, both in this country and in England, disregards the space limitation entirely, imposing upon a person who negligently sets a fire liability for all damages proximately caused thereby, without regard to whether the fire passes across the land of intervening owners before causing damage to the plaintiff. *Smith v. London & S. W. Ry. Co.* (1870) L. R. 6 C. P. 14; *Small v. C., R. I., & P. R. Co.* (1881) 55 Iowa 582, 8 N. W. 437; *Atch., T. & S. F. R. Co. v. Stanford* (1874) 12 Kan. 354; *P. W. & B. R. R. Co. v. Constable* (1873) 39 Md. 149; *Fent v. T., P. & W. Ry. Co.* (1867) 59 Ill. 349; *Perley v. Eastern Railroad Co.* (1868) 98 Mass. 414; *D. L. & W. R. R. Co. v. Salmon* (1877) 39 N. J. L. 299; *P. R. R. Co. v. Hope* (1876) 80 Pa. 373; *Kellog v. Chicago & N. W. Ry. Co.* (1870) 26 Wis. 223; *E. T., V. & G. R. Co. v. Hesters* (1892) 90 Ga. 11, 15 S. E. 828.

The leading Missouri case upon the question of spreading fires is strikingly opposed to the New York position. In *Poeppers v. M. K. & T. R. Co.* (1878) 67 Mo. 715, liability was imposed upon a railroad, a locomotive of which had negligently ignited dried weeds upon its right of way, even though the spreading fire, over a period of more than 24 hours, traveled eight miles across the premises of several intervening landowners before causing damage to plaintiff's buildings. Other Missouri cases are in accord: *Hightower v. M. K. & T. R. Co.* (1878) 67 Mo. 726; *Wise v. Joplin Railroad Co.* (1884) 85 Mo. 178.

In a rather recent case, the Federal Circuit Court of Appeals refused to apply the New York space limitation of liability to a controversy arising in that state upon the ground that the state decisions do not establish a "rule of property" binding on the Federal Court. Although fire had spread 2,000 feet and across lands of two intervening proprietors, the defendant's liability was enforced. *Cole v. P. R. R. Co.* (C. C. A. 2, 1930) 43 F. (2d) 953. It seems probable that this decision will result in an endeavor by future plaintiffs to invoke the Federal jurisdiction wherever possible, the cases being largely brought against railroads. H. W. J., '34.