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35c values . . . 23c
40c values . . . 28c
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THESE are in light weight lawns in many different patterns, persians, flowered or figured. In order to clean up the entire stock we offer them at these extraordinary low prices.

Stockton

OREGON SUPREME COURT DECISIONS

Full Text Published by Courtesy of F. A. Turner, Reporter of the Supreme Court.

Giant Powder Co. v. Oregon Western

Railway Co., et al, Douglas County, Oregon. Plaintiff, v. Oregon Western Railway Company, a corporation, respondent, and G. E. Loss Co., a corporation, respondents. Appeal from the circuit court for Douglas county. The Hon. J. W. Hamilton, Judge. Argued and submitted June 28, 1911. John F. Logan, for appellant. (Also John C. Shillcock, on brief). W. D. Fenton, and R. A. Letter, and C. E. Rice, on brief for Oregon Western Railway Co., respondent. A. C. Emmmons, on brief, for G. E. Loss Co., respondent. Eakin, C. J. Reversed and remanded.

At the commencement of this suit defendant, Oregon Western Railway Company, an Oregon corporation, was engaged in the construction of a railroad from the town of Drain, Oregon, westerly to Winchester Bay, in Douglas county, a distance of about 30 miles. The C. E. Loss company, an incorporated construction company of California, had a contract with the railroad company for the construction of its road. Between August 10, 1906 and January 10, 1907, plaintiff sold explosives to the Loss company, which were used in the construction work, at the agreed price of \$6,864.04, which has not been paid. On March 13, 1907, being within 30 days after the completion of the grading, construction and erection of the road, and within 10 days after the Loss company ceased work thereon, plaintiff filed with the county clerk of Douglas county a notice of lien upon the railroad company's grade and right of way, under the general lien law (Sec. 7416 L. O. L.). The form and contents of the notice are not questioned, and plaintiff brings this suit to foreclose such lien. Demurrers to the complaint were sustained by the circuit court. Plaintiff refused to plead further and judgment was rendered, dismissing the suit. Plaintiff appeals.

Eakin, C. J. The mechanic's lien law of this state, enacted in 1885 (Sec. 7416 L. O. L.), gives to mechanics, laborers and material men,

liens for work or materials furnished in the construction of "any building, wharf, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, or any structure or superstructure." On February 25, 1889, another law was enacted, Sec. 1 of which (Sec. 7429 L. O. L.) provides that: "Any and all person or persons who shall hereafter as subcontractor, materialman, or laborer furnish to any contractor to any railroad corporation any fuel, ties, materials, supplies, or other article or thing, or who shall do or perform any work or labor for such contractor in conformity with any terms of any contract, express or implied, which such contractor may have made with any such railroad corporation, shall have a lien upon all property, real, personal, and mixed, of said railroad corporation; provided, such subcontractor, material man or laborer shall have complied with the provisions of this act, but the aggregate amount of all liens hereby authorized shall not in any case exceed the price agreed upon in the original contract to be paid by such corporation to the original contractor. Nor shall such corporation be liable for any greater sum than the amount then actually due by such corporation to said original contractor; and provided further, that no such lien shall take priority over existing liens."

The lien provided for in this act is perfected by serving upon the railroad company a notice of the nature and amount of the lien, and the person at whose request the work or supplies were furnished. In this case the lien is claimed to have been filed under the general law of 1885, and it is contended by defendant, (1) that the act of 1885 does not authorize a lien upon the property of a railroad company; and (2) that if originally it had that effect, the act of 1889 operates to repeal or supersede the former law; and these are the only questions raised by the demurrers.

The act of 1889 does not, in terms, refer to the former law, but the emergency clause states: "Inasmuch as there is now no law upon this sub-

ject, and it is of importance to laborers and material men, this act shall take effect from and after its approval by the governor," and this it is contended by defendant is a legislative interpretation of the former law, to the effect that it does not apply to railroad construction.

These statutes have been before the federal court for construction in two cases: Giant Powder Company v. Oregon Pac. Ry. Co. 42 Fed. 470, in which Judge Deady held that the law of 1885 gives liens upon railroads to contractors, laborers and material men, for work and material furnished in their construction, and cites Forbes v. Willamette Falls Electric Co., 19 Or. 61, as authority for that construction. The same questions were presented in Ban v. Columbia Southern Ry. Co., before the United States circuit court, 109 Fed. 499, in which it was conceded that the law of 1885 authorized a lien upon railroads for which and materials furnished in the construction thereof, but that the act of 1889 operated to repeal, by implication, that law, so far as it related to railroads. That case, however, was taken to the United States circuit court of appeals and was there reversed. (117 Fed. (C. C. A.) 21.) The court, Judge Hawley, writing the opinion, held, on the authority of Giant Powder Co. v. Ore. Pac. Ry. Co., as well as upon the language of the statute itself, that the law of 1885 provides for liens on railroads; and further holding that the act of 1889 does not supersede or repeal by implication the former law. Also Elliott adopts the views of these cases and says, that whether the word "structure," of the law of 1885, will include railroads will depend very largely upon the context, "under the maxim noscitur a sociis, and the phrase 'any other structure,' has been held to include a railroad when preceded by a specific enumeration of works or property of a somewhat similar character." (Elliott on R. R. 2d Ed. Sec. 1066.)

The apparent scope and purpose of the act of 1889 must be kept in mind in determining its effect upon the law of 1885. It does not have exclusive application to construction work, if indeed it is intended to include such. It makes no reference to the construction or repair of the road, and the fuel, ties, materials and supplies for which the lien is given includes such as are used in the operation of the road. The lien is upon the thing constructed or repaired, as in the act of 1885, but "upon all property, real, personal, and mixed, of the company." The original contractor is not included among those who shall have the lien, nor is the railroad company or its property liable at all events for the debt for which the lien is given, as in the former statute, but only to the extent of its liability to the original contractor at the time notice is given to it; and no provision is made therein for filing with the county clerk a notice of the lien, or otherwise giving any notice to the public or other lien claimants.

The text indicates that the law is intended to secure only to laborers and others furnishing the labor and supplies to the contractor the means of enforcing payment out of any money due to him. Therefore, the act of 1889 does not take the place of the former law, but is for a different purpose and does not give the relief intended by the law of 1885.

This is also the opinion of Judge Hawley in the Ban case, at page 34. A careful reading of Sec. 1 of the act shows that the emergency clause is not an interpretation of the law of 1885, but it states the fact, there being no other law for such a lien as is here provided. Some courts have held that because railroads are public service enterprises that, therefore, general lien laws are not applicable to them. Tod v. Kentucky Union Ry. Co., 52 Fed. 241; Crawford v. Tilden, 13 Ont. L. Rep. 169; (7 A. & E. Ann. C. 267). But it is nowhere suggested that the legislature may not make them subject to such liens. Neilson v. The Iowa Eastern Ry. Co., 44 Iowa 71; Pennsylvania Steel Co. v. Potts Lumber Co., 63 Fed. 41; Elliott on R. R. (2d ed.) Sec. 1967. And if the language of the statute is broad enough to include them there is no reason why it should not be so applied. This is the holding in Dunavant v. Railroad, 122 N. C. 999, although it had been previously held in Buncombe County Com. v. Tomney, 115 U. S. 122, that the North Carolina statute did not extend to railroads. In Hill et al v. La Crosse, etc., Co., 11 Wis. 214, 224, in speaking of the general lien law it is said: "the object was to furnish a protection to those who expended their labor and materials in improving the property of others. Is there anything in public policy that requires, or should permit railroads to be built at the expense of defeating this object? If there is, we fail to perceive it, and shall recognize no such policy till the legislature enacts it into a positive law."

But where a railroad company have no disposition to exempt them from its provision. In Purcell v. Chicago & North Western Ry. Co., 74 Wis. 132, in speaking of a lien on a bridge, it is said: "there is no public policy prevailing in this state against enforcing a laborer's lien upon any bridge or other structure of a railroad company, for work performed thereon, no matter whether such structure is or is not part and parcel of the railway, or to what extent the enforcement of a lien thereon may interfere with or impede the operation of the railway or the exercise of the company of its corporate franchises. On the contrary, the public policy of this state is to enforce such a lien and the company operates its railway and uses its franchises subject to the obligation to pay the claim of the lienor as established by the judgment." On this subject see the exhaustive note and collation of authorities in Crawford v. Tilden, supra, at p. 269 of 7 Am. & Eng. Ann. Cases. Although it is important that the public service by the railroad be maintained, it is not so important that it should be done at the expense of the laborers, contractors and material men, and the

right to the lien in any case should be made to depend upon whether the statute is sufficiently comprehensive to include them. We have no hesitation in holding that the act of 1885 was intended to give a lien upon railroads in favor of the contractor, material men and laborers; and that the act of 1889 does not repeal the former law as to railroads or exempt them from the operation of it. The decree of the lower court is reversed and remanded for further proceedings.

CRIMINAL CASES

ARE SET FOR TRIAL

"Not guilty" was the plea entered this morning by W. H. Meehan, of Woodburn, when arraigned before Judge Kelly on the charge of obtaining money under false pretences. His case has been set for trial on August 2, and he has retained the firm of Kaiser and Pogue to represent him.

Other Cases Set.

Judge Kelly also set the case of B. Sato, charged with an assault with a deadly weapon for trial Thursday morning. He is a Japanese and the offense is alleged to have been committed upon another Jap.

The case of the state against A. H. Yoder, former principal of the Woodburn schools, will follow Sato's trial. Yoder is charged with an assault and battery upon the person of Liddy Shembeck, a 14 year old school girl. The offense is alleged to have been committed while he was principal of the school and to consist in taking undue liberties with her person.

STATE NEWS.

A party of Y. M. C. As will climb Mt. Hood next Monday.

The Elks had a big blowout in Portland Wednesday night, celebrating the coming of the grand lodge in 1912.

Bradleton is preparing to have a real wild west show.

The First State Bank opened its doors at Eagle Point Monday.

J. S. Diller, a prominent government expert, will speak at the miners' congress at Grants Pass.

Marshfield is to have a summer school.

Oregon City is putting up some exhibits of her products that make all who see them sit up, take notice and then look again.

Five census enumerators have been arrested in Portland.

The thermometers in Portland yesterday registered 91 in the shade.

The coroner's jury at The Dalles is investigating the Oregon Trunk wreck.

The yield of cherries at Hood River is large, and the quality first-class.

Draper claims the oldest postmaster in the state, Robert A. Cook, 87, who has held the office for 27 years.

Angelo Brown, aged 22, drowned in the Umpqua, near Roseburg, Wednesday.

Ralph Burd, aged 12, was drowned at Elyville, below Oregon City, Wednesday, despite the heroic efforts of a young companion, Kenneth Morrison, who bravely went to his assistance, and was carried down three times before he gave up the struggle to save his companion.

Dallas will make a fine exhibit at the state fair.

Cos county will have a fine exhibit at the state fair.

ROSEY AS A GIRL

Summit, N. C.—In a letter received from this place, Mr. J. W. Church, the notary public, says: "My wife had been ailing for nearly 12 years, from female ailments, and at times, was unable to leave the house. She suffered agony with her side and back. We tried physicians for years, without relief. After these treatments all failed, she took Cardui, and gained weight at once. Now she is red and rosy as a school girl." Cardui, as a tonic for women, has brought remarkable results. It relieves pain and misery and is the ideal tonic for young and old. Try it. At druggists.

BOYS

One Share of Two Thousand Dollars

I shall give to every boy who sells to 10 of his friends a standard five-cent article each week this summer. In addition to the big prize a regular income is assured. I'll tell you how. Make a list of the 10 names and addresses. Bring it with you. You needn't miss ball game or fishing trip. Bring your parents if you choose. Come early.

EUGENE HOUSTON
745 South Commercial Street
Salem, Oregon

FLY KNOCKER

Get a can of Conkey's Fly Knocker and kill the flies. It kills all that it comes in contact with, and keeps the rest away.

That HORSE or COW will appreciate it.

Try it and see the results; money back if it does not do the work.

D. A. WHITE & SONS

255 N Com St. Phone 160
Salem, Oregon.

THE OPEN FORUM

The Capital Journal invites Public Discussion in This Department—Let Both Sides of All Matters Be Fully Brought Out—It is Not the Purpose of This Newspaper to do the Thinking for Its Readers.

Likes Weekly Journal.

Editor Journal: Dear Sir: With greatest pleasure I herewith inclose \$1, renewing my subscription to the Capital Journal for another year. I consider The Capital Journal one of the newest newspapers I have ever read. Both editorials and news columns are clean, fresh, pointed and up-to-date. I strongly endorse and admire your grand standard of morality and your exposure and condemnation of various grafts, hypocrisy and corruption, wherever they are found to exist, meets with the most hearty and earnest support of every honest reader of your esteemed paper.

Another grand feature in the composition of The Capital Journal is those celebrated and soul-stirring sermons by Pastor Charles T. Russell, and the punctual regularity in which they appear, once every week. Such sensible and reasonable sermons published in the columns of such a sensible and clean newspaper as The Capital Journal certainly makes a most splendid combination for the reader and cannot fail to be highly appreciated.

As for myself, I will candidly state that it was those wonderful sermons in The Journal which first attracted my attention to the paper, and now, after taking your paper for more than a year, I am so well pleased with the whole of it, that I have both given away to neighbors and forwarded through the mails a great many copies of the same.

Assuring you that The Capital Journal is a most welcome guest every week at our home, and that I shall always speak a good word for it wherever and whenever I can do so.

RASMUS F. JOHNSON.
Weston, Ore., July 11.

Lebanon Doing Well.

Ed. Journal: I am gratified to know that your Cherry Fair was such a success, and that you are pleased with the good attendance from Lebanon.

You ask me what I think of the business outlook. That is a hard question to answer. I hear of a depression in some sections of the state, but we have not felt this depression here in Lebanon to any appreciable extent. As you know, Lebanon is developing at a reasonable rate. There has never been a boom in Lebanon. In fact, we do not care to have a boom, on account of the resulting evil effects. The demand for property is not very strong at this time, although there is a constant, but a moderate, sale of both kinds of property going on all the time. I think the natural advantages of Lebanon and the surrounding country would justify a much more rapid development.

SAM'L L. GARLAND.
Lebanon, July 11.

A People's Charter.

Ed. Journal:—There is some vital questions to be considered in drawing up of the plans for a new city charter, that it may be acceptable to the people and if it is not so drawn and worded, and given full publicity, it will meet the same fate that the bridge bonds received, in the last two elections. The people want to know how the city is to be run, whether in the interest of the people, by the city, or to be let out to contractors, who will bring in a lot of daogoes to do the work that by right belongs to the people who live here, and have their families here, spend their money here building homes, improving the country. The graft system is a thing of the past, and the times demand more conservatism under a new charter. The people will have nothing but the best, and the approval by the people of any measure for large improvements to be undertaken must be submitted for their approval, before it is undertaken. The city must plan to do its own work, and give employment to her own people at a scale of wages commensurate with the employment or work to be done, and no other plan will be adopted, or approved by the people at the election.

Salem, July 12. A CITIZEN.

That Lebanon Speech.

Col. E. Hofer Ed. Journal:—The Independence Enterprise printed the speech you made at the Lebanon fair. I cannot resist complimenting you. Every assertion in your remarks are true and to the point. I read it over and over, and never found a better speech from a standpoint of truth, than yours. I congratulate you on the stand you have taken and every broad-minded person will fall in line with you.

ZED ROSENDORE.
Independence, July 10.

Foley Kidney Pills are specially useful in all ailments and disorders of the kidneys and bladder, because they are composed of ingredients specially selected for their corrective, healing, tonic, and stimulating effect upon these organs and the urinary passages. They are antiseptic, antilithic and a uric acid solvent. Try them.

Red Cross Pharmacy, (H. Jerman.)

Many people have confidence in President Taft, but that Controller bay episode has a sinister aspect.

For sale by Red Cross Pharmacy. Teething children have more or less diarrhoea, which can be controlled by giving them Chamberlain's Colic, Cholera and Diarrhoea Remedy. All that is necessary is to give the prescribed dose after each operation of the bowels more than natural, and then castor oil to cleanse the system. It is safe and sure. Sold by all dealers.

Children Cry FOR FLETCHER'S CASTORIA

Women's Secrets

There is one man in the United States who has perhaps heard more women's secrets than any other man or woman in the country. These secrets are not secrets of guilt or shame, but the secrets of suffering, and they have been confided to Dr. R. V. Pierce in the hope and expectation of advice and help. That few of these women have been disappointed in their expectations is proved by the fact that ninety-eight per cent. of all women treated by Dr. Pierce have been absolutely and altogether cured. Such a record would be remarkable if the cases treated were numbered by hundreds only. But when that record applies to the treatment of more than half-a-million women, in a practice of over 40 years, it is phenomenal, and entitles Dr. Pierce to the gratitude accorded him by women, as the first of specialists in the treatment of women's diseases.

Every sick woman may consult Dr. Pierce by letter, absolutely without charge. All replies are mailed, sealed in perfectly plain envelopes, without any printing or advertising whatever, upon them. Write without fear as without fee, to World's Dispensary Medical Association, Dr. R. V. Pierce, Pres., Buffalo, N. Y.

DR. PIERCE'S FAVORITE PRESCRIPTION
Makes Weak Women Strong,
Sick Women Well.



The Doctor's Answers On Health and Beauty Questions

By Dr. Theodore Beck

The questions answered below are general in character; the symptoms or diseases are given and answers will apply to any case of similar nature. Those wishing further advice, free, may address Dr. Theo. Beck, College Ridge, College-Eliwood Sts., Dayton, Ohio, enclosing self-addressed envelope for reply. No questions will be answered unless full name and address is given. Initials or non de plume will be used in answers. The prescriptions can be filled at any well stocked drug store. Any druggist can order of wholesaler.

K. O.—I judge from your letter that you have had a very unhappy life, and now that you are married sickness intervenes to destroy your new found contentment. Your symptoms indicate a disordered liver and are repeated here for the benefit of others: Drowsiness, weakness, languor especially after eating, nervousness, headache floating specks, dizziness, salivary complexion, constipation, irritability, etc. For malaria or disordered liver and bowels this prescription may be relied upon when properly filled by an honest druggist: Fluid ext. mandrake 3 drams, aromatic cascara 1 oz., compound essence cardiol 1 oz., aromatic syrup rhubarb 4 ozs. Mix and take one-half to a teaspoonful after each meal and at bedtime. Continue several months if necessary.

Anette:—Severe and weakening coughing spells on arising in the morning or after slight exertion indicate bronchitis or bronchial asthma. A most sure and effective prescription is given as follows: Oil of eucalyptus 1 dram, terebene 1 dram, essence mentho-laxene, 2 1/2 ozs., glycerine 6 ozs. Mix. Always shake bottle and take a teaspoonful every hour or two hours through the day.

John K.:—Your devotion to your wife and your anxiety for her welfare are commendable, but her trouble is not serious now, but will become so if neglected. Her symptoms being those of indigestion and dyspepsia, are, pains under the shoulders, heart palpitation, shortness of breath after eating, belching gas and heavy feeling in the stomach. For quick relief, obtain a package of tablets (triptopine and take pink after breakfast, white after dinner and blue after supper. As a tonic, restorative, take a teaspoonful before meals of the following: Compound syrup hypophosphites 6 ozs., tincture cadomene compound 1 oz. Mix. Continue six to eight weeks.

Bad Teeth:—You should consult a good dentist even if you only have two bad teeth. As you say, tooth powders and pastes are expensive, but you can make enough of the very best to last your whole family a year or more at a trifling cost compared with labeled goods. The following formula can be mixed by anyone and will prevent decay, cleanse, purify and remove accumulations of "tartar" and discolorations of tobacco, berries, etc. Get 5 ozs. precipitated chalk, 3 ozs. powdered sugar, 1 oz. powdered soap and 2 ozs. antiseptic vilane powder. Mix thoroughly and keep dry. Apply with toothbrush one or more times daily.

I. R. B.:—I must thank you for

your kind words of appreciation. I was certain you would find a cure for dandruff in plain yellow minyol, which I always recommend.

Now, as to such symptoms as frequent, scanty burning, uncontrollable urination accompanied by pains in the small of the back, bladder irritation, puffed ankles, swollen eyes, etc., you should know that the kidneys are out of order and not properly performing their duties. Never neglect such symptoms as they may increase and cause Bright's disease, or diabetes. Begin taking the following prescription and continue until all symptoms have vanished: Fluid ext. buchii 1 oz., comp. fluid balwort 1 oz., comp. syrup sarsaparilla 4 ozs. Mix and take a teaspoonful before or after meals and one when retiring. At first your symptoms may increase, but gradually they will disappear altogether.

Blue Alice:—You crave sympathy because you are sensitive of your abnormal thinness, and thus you are not attractive like a plump, healthy, vigorous girl of your age should be. If you will faithfully follow this advice you should soon be rewarded with increased color, pink cheeks, red lips, healthy waving hair and an additional twenty to thirty pounds in weight. Obtain 3-grain Hypo-Nutric tablets and take regularly in sealed package. You will not be lonely and neglected when you become plump and healthy.

Auto Girl:—You probably eat too heartily and do not get sufficient exercise. However, the joys of motoring has caused many to neglect walking, and thus constipation, headaches, biliousness, muddy complexion and plainly faces appear more than ever amongst women. If every such person would adopt the use of 3-grain tablets sulphur (not sulphur), they would be freed from constipation and all the distressing results above enumerated. This little tablet can be used indefinitely and keeps the bowels pure and the bowels active when ordinary laxatives are ineffective.

Madam R.:—Since you are a lady of wealth and do not care for your own hair and scalp, but depend on a professional hair-dresser, why do you not insist on her using the plain yellow minyol. Scores of the best beauty parlors and hair dressers use minyol and thus please and keep their customers. I assure you it will make your hair lustrous, glossy and beautiful, while scalp sores and dandruff will not longer trouble you. Plain yellow minyol is packed in 4 oz jars and any well-stocked drug store has it.

Six Acres for \$500.

To make a quick sale four days only, until July 15th, six acres of fine land on river road north, price \$500.

\$100 PER ACRE

Now is the time to buy a farm while the crop is growing. 200 acres well improved, good crop, all stock and implements. Everything included for \$100 per acre. Terms.

15 ACRES, \$175 PER ACRE

Just outside of the city limits. Snap. \$500—VACANT LOT—\$500

Choice vacant lot close in on a paved street. Terms.

SNAP

Fine block 16 lots on Capitol street, close in for sale at a bargain. Owner desires to sell as a whole. This block can be cut up and sold off in 18 lots at a profit. Capitol street is paved and a car line will shortly run on one side of the block. The franchise having recently been granted to the Portland Railway, Light & Power company. For terms and other information see us at once.

WHY PAY RENT

We have several nice houses and in good location on easy payment plan. Small amount down, balance same as rent.

WE WRITE INSURANCE

Fine driving team for sale cheap. We buy, sell or exchange your property satisfactorily.

BECHTEL & BYNON
347 State

Chamberlain's Stomach and Liver Tablets gently stimulate the liver and bowels to expel poisonous matter, cleanse the system, cure constipation and sick headache. Sold by all dealers.

Perhaps nobody can be too good, but some people can easily make too great pretensions to goodness.

Call for Bids.

Notice is hereby given that the undersigned will receive bids up to 5 o'clock p. m. on Monday, July 17, 1911, for the construction of an intercepting and outflow sewer, in the city of Salem, Oregon, along the east bank of the Willamette river from the intersection of the Ferry street and the South Salem sewer to the north line of Center street and the east bank of the Willamette river at low water, according to the plans adopted for said improvement and on file at the office of the city recorder for said city.

Bids must be submitted upon forms as required by the city engineer and a certified check for the amount of 5 per cent of each bid must accompany the same, made payable to the mayor of the city of Salem, Oregon.

The council reserves the right to reject any or all bids and right to waive formal defects in the submission thereof.

CHAS. F. ELGIN,
City Recorder.

CASTORIA

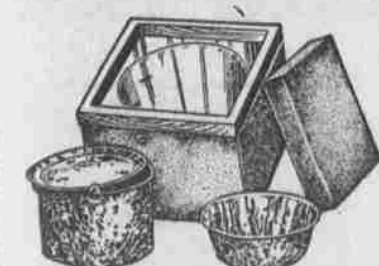
For Infants and Children.
The Kind You Have Always Bought

Bears the Signature of *Dr. J. C. Perry*

Old Soldier Tortured.

"For years I have suffered unspeakable torment from indigestion, constipation and liver trouble," wrote A. K. Smith, a war veteran at Erie, Pa., "but Dr. King's New Life Pills fixed me all right. They're simply great." Try them for any stomach, liver or kidney trouble. Only 25c at J. C. Perry's.

HALF PRICE SALE



Fireless Cookers

One Compartment Cookers, regular \$2.00 values, special \$1.00

Two Compartment Cookers, regular \$10.00 values, special \$5.00

Buren & Hamilton

COMPLETE HOUSE FURNISHERS

FOLEY KIDNEY PILLS

for backache, rheumatism, kidney or bladder trouble, and urinary irregularities. Foley Kidney Pills are tonic in action, quick in results. Refuse substitutes. J. C. PERRY.