

tice of motion to set aside proceedings for irregularity shall specify clearly the irregularities intended to be complained of, and the several objections intended to be insisted on.

I do not think that the judgment was a nullity. One of the claims indorsed upon the writ, namely, the claim for balance due to the plaintiff on account for goods sold and delivered, rendered to the defendant and admitted by him to be correct—in short, for an amount due upon an account stated—was properly the subject of a special indorsement; the other claim was a charge or claim for interest, which, not being shewn or stated to be payable under contract or by statute, was merely an unliquidated claim for damages in the nature of interest, and therefore recoverable only as damages. The case was thus one within the exact terms of Rule 711 of the Rules which came into force on the 1st September, 1888, in which the writ was specially indorsed for a liquidated claim and for damages, and in which, on non-appearance, the plaintiff in the action was entitled to enter final judgment for the former and interlocutory judgment for the latter. Instead of doing so, however, he entered judgment for the whole, not only for the debt, but also for the sum claimed as interest thereon. Such a judgment, had it been attacked within a reasonable time, might, in my opinion, have been amended, inasmuch as one part of the claim was properly the subject of a special indorsement, and, therefore, of a final judgment on non-appearance, and the only fault to be found with it was that it was signed for too much. The plaintiff was not bound, that I know of, to have signed interlocutory judgment for or to have pursued the residue of his claim. His omission to do that could not have affected a judgment properly signed for the debt for which the writ was rightly specially indorsed.

The effect of Rule 711 is concisely stated by Street, J., in *Hollender v. Ffoulkes*, 16 P. R. 175, and it was fully considered by this Court in *Solmes v. Stafford*, *ib.* pp. 264, 270, 271. In both cases the difference between a judgment on default of appearance, to which the Rule did apply, and a motion for summary judgment after appearance, under Rule 739, to which it did not, is pointed out. I have found no case by which we are bound—I may say no case—decided while Rule 711 was in force, which would compel us to hold that such a judgment as was here entered was a nullity, and therefore not amendable. Conceding that it was irregular,