Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GRUPO MEXICANO DE DESARROLLO, S. A., ET AL. *v.* ALLIANCE BOND FUND, INC., ET AL.

CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 98–231. Argued March 31, 1999– Decided June 17, 1999

Respondent investment funds purchased unsecured notes (Notes) from petitioner Grupo Mexicano de Desarrollo, S. A. (GMD), a Mexican holding company. Four GMD subsidiaries (also petitioners) guaranteed the Notes. After GMD fell into financial trouble and missed an interest payment on the Notes, respondents accelerated the Notes' principal amount and filed suit for the amount due in Federal District Court. Alleging that GMD was at risk of insolvency, or already insolvent, that it was preferring its Mexican creditors by its planned allocation to them of its most valuable assets, and that these actions would frustrate any judgment respondents could obtain, respondents requested a preliminary injunction restraining petitioners from transferring the assets. The court issued the preliminary injunction and ordered respondents to post a $50,000 bond. The Second Circuit affirmed.

Held:

1. This case has not been rendered moot by the District Court's granting summary judgment to respondents on their contract claim and converting the preliminary injunction into a permanent injunction. Generally, the appeal of a preliminary injunction becomes moot when the trial court enters a permanent injunction because the former merges into the latter. Here, however, petitioners' potential cause of action against the injunction bond for wrongful injunction suffices to preserve the Court's jurisdiction, since petitioners' argument that the District Court lacked the power to restrain their use of assets pending a money judgment is independent of their defense against the money judgment on the merits. For the same reason, peti-

tioners' failure to appeal the conversion of the preliminary injunction into a permanent injunction does not forfeit their claim on the bond. Pp. 4–9.

2. The District Court lacked the authority to issue a preliminary injunction preventing petitioners from disposing of their assets pending adjudication of respondents' contract claim for money damages because such a remedy was historically unavailable from a court of equity. Pp. 9–25.

(a) The federal courts have the equity jurisdiction that was exercised by the English Court of Chancery at the time the Constitution was adopted and the Judiciary Act of 1789 was enacted. Pp. 9–10.

(b) The well established general rule was that a judgment fixing the debt was necessary before a court in equity would interfere with the debtor's use of his property. See, *e.g., Pusey & Jones Co.* v. *Hanssen,* 261 U. S. 491, 497. It is by no means clear that there are any exceptions to the general rule relevant to this case, and the lower courts did not address this point. The merger of law and equity did not change the rule, since the merger did not alter substantive rights. The rule was regarded as serving not merely the procedural end of assuring exhaustion of legal remedies, but also the substantive end of giving the creditor an interest in the property which equity could act upon. Pp. 10–15.

(c) The postmerger cases of *Deckert* v. *Independence Shares Corp.,* 311 U. S. 282, *United States* v. *First Nat. City Bank,* 379 U. S. 378, and *De Beers Consol. Mines, Ltd.* v. *United States,* 325 U. S. 212, are entirely consistent with the view that the preliminary injunction in this case was beyond the District Court's equitable power. Pp. 16–19.

(d) The English Court of Chancery did not provide a prejudgment injunctive remedy until 1975, and the decision doing so has been viewed by commentators as a dramatic departure from prior practice. Enjoining the debtor's disposition of his property at the instance of a nonjudgment creditor is incompatible with this Court's traditionally cautious approach to equitable powers, which leaves any substantial expansion of past practice to Congress. Pp. 19–21.

(e) The various weighty considerations both for and against creating the remedy at issue here should be resolved not in this forum, but in Congress. Pp. 21–25.

143 F. 3d 688, reversed and remanded.

SCALIA, J., delivered the opinion for a unanimous Court with respect to Part II, and the opinion of the Court with respect to Parts I, III, and IV, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined.