right or privilege, or claim or protection, or defense of the party, in whole or in part, by whom they are asserted. . . .”

“The constitutional right of Congress to authorize the removal before trial of civil cases arising under the laws of the United States has long since passed beyond doubt. It was exercised almost contemporaneously with the adoption of the Constitution, and the power has been in constant use ever since. The Judiciary Act of September 24, 1789, was passed by the first Congress, many members of which had assisted in framing the Constitution; and though some doubts were soon after suggested whether cases could be removed from state courts before trial, those doubts soon disappeared.” [785] The Court has broadly construed the modern version of the removal statute at issue in this case so that it covers all cases where federal officers can raise a colorable defense arising out of their duty to enforce federal law.[786] Other removal statutes, notably the civil rights removal statute, have not been so broadly interpreted.[787]

Corporations Chartered by Congress.—In *Osborn v. Bank of the United States*,[788] Chief Justice Marshall seized upon the authorization for the Bank to sue and be sued as a grant by Congress to the federal courts of jurisdiction in all cases to which the bank was a party.[789] Consequently, upon enactment of the 1875 law, the door was open to other federally chartered corporations to seek relief in federal courts. This opportunity was made actual when the Court in the *Pacific R.R. Removal Cases* [790] held that tort actions against railroads with federal charters could be removed to federal courts solely on the basis of federal incorporation. In a series of acts, Congress deprived national banks of the right to sue in federal court

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[785] 100 U.S. at 264–65.

[786] Willingham v. Morgan, 395 U.S. 402 (1969). *See also* Maryland v. Soper, 270 U.S. 9 (1926). Removal by a federal officer must be predicated on the allegation of a colorable federal defense. Mesa v. California, 489 U.S. 121 (1989). However, a federal agency is not permitted to remove under the statute’s plain meaning. International Primate Protection League v. Tulane Educ. Fund, 500 U.S. 72 (1991).

[787] Georgia v. Rachel, 384 U.S. 780 (1966); City of Greenwood v. Peacock, 384 U.S. 808 (1966); Johnson v. Mississippi, 421 U.S. 213 (1975).

[788] 22 U.S. (9 Wheat.) 738 (1824).

[789] The First Bank could not sue because it was not so authorized. Bank of the United States v. Deveaux, 9 U.S. (5 Cr.) 61 (1809). The language, which Marshall interpreted as conveying jurisdiction, was long construed simply to give a party the right to sue and be sued without itself creating jurisdiction, Bankers Trust Co. v. Texas & P. Ry., 241 U.S. 295 (1916), but, in American National Red Cross v. S. G., 505 U.S. 247 (1992), a 5-to-4 decision, the Court held that, when a federal statutory charter expressly mentions the federal courts in its “sue and be sued” provision, the charter creates original federal-question jurisdiction as well, although a general authorization to sue and be sued in courts of general jurisdiction, including federal courts, without expressly mentioning them, does not confer jurisdiction.

[790] 115 U.S. 1 (1885).