it is tendered; and if it be rejected, we have discovered no power in a court to force it on him." Marshall continued to hold that to be noticed judicially this deed must be pleaded, like any private instrument.[250]

In *Burdick v. United States*,[251] Marshall's doctrine was put to a test that seems to have overtaxed it, perhaps fatally. Burdick, having declined to testify before a federal grand jury on the ground that his testimony would tend to incriminate him, was proffered by President Wilson "a full and unconditional pardon for all offenses against the United States," which he might have committed or participated in in connection with the matter he had been questioned about. Burdick, nevertheless, refused to accept the pardon and persisted in his contumacy with the unanimous support of the Supreme Court. "The grace of a pardon," remarked Justice McKenna sententiously, "may be only a pretense . . . involving consequences of even greater disgrace than those from which it purports to relieve. Circumstances may be made to bring innocence under the penalties of the law. If so brought, escape by confession of guilt implied in the acceptance of a pardon may be rejected . . . ."[252] Nor did the Court give any attention to the fact that the President had accompanied his proffer to Burdick with a proclamation, although a similar procedure had been held to bring President Johnson's amnesties to the Court's notice.[253] In 1927, however, in sustaining the right of the President to commute a sentence of death to one of life imprisonment, against the will of the prisoner, the Court abandoned this view. "A pardon in our days," it said, "is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed."[254] Whether these words sound the death knell of the acceptance doctrine is perhaps doubtful.[255] They seem clearly to indicate that by substituting a commutation order for a deed of pardon, a President can always

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[250] United States v. Wilson, 32 U.S. (7 Pet.) 150, 160–61 (1833).

[251] 236 U.S. 79, 86 (1915).

[252] 236 U.S. at 90–91.

[253] Armstrong v. United States, 80 U.S. (13 Wall.) 154, 156 (1872). In Brown v. Walker, 161 U.S. 591 (1896), the Court had said: "It is almost a necessary corollary of the above propositions that, if the witness has already received a pardon, he cannot longer set up his privilege, since he stands with respect to such offence as if it had never been committed." Id. at 599, citing British cases.

[254] Biddle v. Perovich, 274 U.S. 480, 486 (1927).

[255] *Cf.* W. Humbert, The Pardoning Power of the President 73 (1941).