Richard Kuhn, who suffered a broken nose and jaw, was on the other. Schildt and Green were tried and convicted by a jury of simple assault. While several items were included in Schildt's motions for a new trial and in arrest of judgment, only one issue was submitted to the court.

Kuhn said that after the fight he was getting up and trying to look over to Schildt and told him another person was going to call the police. When asked what happened next to the defendant, the witness replied: "Well, then Eddie (Edwin Schildt) said that they are going to press charges and they'll come back and get me on account of my pig wife. If I have to go back to jail -- I just got out of the state penitentiary." Immediately, at side bar, Schildt's counsel objected for the reason that the answer was not responsive and alluded to an earlier crime and moved for a mistrial.

The court refused the motion but admonished the jury not to consider anything said by Kuhn which would suggest that Schildt had a prior record.

Kuhn's statement, as the record indicates, was unresponsive. It was not elicited by the District Attorney in an attempt to establish prior criminal record. It was an isolated remark, and after the incident the trial continued for several hours and through the testimony of several other witnesses.

In *Commonwealth v. Markle*, 245 Pa. Super 108, 369 A. 2d 317 (1976), a witness who was asked how long he knew the defendant responded by saying he had seen the defendant before May 15th when they were in Graterford (a State Correctional Institution), but that he just passed him once or twice. There, too, defendant moved for a new trial. The trial court denied the motion with cautionary instructions, and on appeal it was found the statement did not prejudice defendant's trial. The results were similar in *Commonwealth v. Whitman*, 252 Pa. Super 66, 380 A. 2d 1284 (1977) and *Commonwealth v. Rhodes*, 250 Pa. Super 210, 378 A. 2d 901 (1977). In both of these cases witnesses made unsolicited references to the defendant's prison record. In *Whitman* the defendant rejected the court's offer of cautionary instructions and in *Rhodes* such instructions were given. In both cases the Superior Court affirmed the convictions and, noting that the witnesses' remarks were not solicited by the District Attorney, held that the defendants were not denied fair trials.

ORDER OF COURT

November 28, 1979, the motions for new trial and in

arrest of judgment are denied. It is ordered that the Franklin County Probation Department prepare a pre-sentence investigation report and that the defendant appear before the court for sentencing on January 30, 1979, at 9:00 o'clock a.m., Court Room No. 1, Court House, Chambersburg, Pennsylvania.

COMMONWEALTH v. SHORT, C.P. Franklin County Branch, No. 70 of 1979

Criminal Law - Aggravated Assault - Points for Charge

1. In order to convict of an assault where no injury is sustained, an attempt must be shown and this requires the showing of an intent to cause bodily harm.

2. An inference of an intent to inflict serious bodily injury can be made where a person caused a car to accelerate with a police officer standing in front of it.

3. The Court need not read defendant's points for charge verbatim, so long as the issues raised are adequately, accurately and clearly presented to the jury for their consideration.

John F. Nelson, Esq., Assistant District Attorney, Attorney for the Commonwealth

Richard L. Shoap, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., September 18, 1979:

The defendant, Alan Ray Short, was a fugitive. He was being actively pursued by the Pennsylvania State Police who learned that he might be in the Barclay Village area of Chambersburg. Cpl. Farrell and Tpr. Lingenfelter in going to that area noticed a car approaching them and Tpr. Lingenfelter indentified one of the occupants as Short. Farrell got out of the police car, stood in the center of the lane in which the car was traveling and signaled the car to stop by extending his arm palm outward.

The vehicle was operated by another, but Short was an

ERRATUM:

Please note that in Vol. 2, Issue No. 46, dated April 4, 1980, the report of the case of Commonwealth v. Short (p. 232) was inadvertently inserted, when it had already been published, beginning at p. 150. We are therefore doing p. 232 over, and replacing it with new material. The new material will be published in Bound Volume 3 on p. 232, and the repeated material will be deleted therefrom.

MANAGING EDITOR

arrest of judgment are denied. It is ordered that the Franklin County Probation Department prepare a pre-sentence investigation report and that the defendant appear before the court for sentencing on January 30, 1979, at 9:00 o'clock a.m., Court Room No. 1, Court House, Chambersburg, Pennsylvania.

AKERS, et ux. v. MARTIN, C.P. C.D. Franklin County Branch, No. A.D. 1979 - 206

Trespass - Damages - Loss of Consortium - Pleading Conclusion of Law

1. Where plaintiff-wife was inquired in an auto accident three days prior to date set for wedding with plaintiff-husband, plaintiff-husband may not recover for loss of consortium of his wife because the cause of action arose prior to marriage.

2. A pleading which sets forth such material facts as to make out a cause of action is sufficient even though it contains conclusions of law.

William S. Dick, Esq., Attorney for Plaintiffs

Gregory L. Kiersz, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., February 7, 1980:

Randy and Pamela Akers are husband and wife and they have filed a trespass action against Gerald Wayne Martin.

Pamela's is the first cause of action; it alleges an automobile accident in which Pamela was injured and in which Martin was the driver of the other car. In the second cause of action, Randy states that at the time of the accident he was not married to Pamela but that he has since married her and that in the future he may be deprived of her assistance, companionship and society.

The preliminary objections filed by Martin are in the nature of a motion to strike both causes of action and a demurrer to Randy's, the latter on the grounds that it does not set forth a recoverable cause of action.

As to Pamela's cause of action, the defendant has moved to strike paragraphs 6, 7 and 8 because they state conclusions of law. While we agree that such terms and phrases as "care-