K E N T U C K Y C O U R T O F A P P E A L S.

Floyd Blankenship and Mont Blankenship, Appellants.

Vs. / Brief for Appellants.

The Commonwealth of Kentucky, Appellee.

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AB the January term, I90I of the Pike circuit Court, Bill Parsons, Floyd Blankenship and Mont Blankenship were indicted for the murder of Meyer Hurley, and thereafter at the September term of said Court the said Floyd Blankenship and Mont Blankenship were tried and found guilty of voluntary manslaughter, and their punishment fixed at imprisonment in the penitentiary for 2I years; and their motion and grounds for a new trial, having been overruled, they have appealed from the judgment of the Pike Circuit Court, and assign for error and reversal of the Judgment of the Court below the court erred in overruling the demurrer to the indictment the fact that the Court did not properly instruct the jury, in that it was improper for the Court to give instruction number 4, which is in words and figures as follows " If the Jury believe from the evidence that the accused sought out the difficulty with the deceased, and continued to engage in and urge the difficulty, up to and including the time of the firing of the fatal shot, they can not acquit the accused upon the grounds of self defence, or apparent necessity, as defined in Instruction 3". This instruction should not have been given for the reason ~~that~~ the testi-