THE LAW OF THE MOUNTAINS



David McNaughtan KC & Bruce Langlands

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Aonach Eagach Ridge


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[illegible] narrowest ridge on the British mainland.

"An outstanding route with breath-taking exposure. Although rarely very technical, it is usually committing and there are long sections where a simple trip could be fatal."

Scrambling experience, sure footedness, and a head for heights are essential.

Once committed, there are no escape routes until you reach the end.

Video credit: Dan Baker @danthephimaledge





Aonach Eagach Ridge

“Immediately after leaving the summit (of Am Bodach) is one of the most challenging sections: a tricky down-climb zig-zagging north, then back south, down a couple of meters and then back north to the crest.”

One of the steepest, loosest, and most technical sections on major Scottish ridge routes. It requires constant care underfoot.

Video credit: Dan Baker @dantheprimaledge



Aonach Eagach Ridge

Section 26(2)(g) – facts relevant to the circumstances of the death.

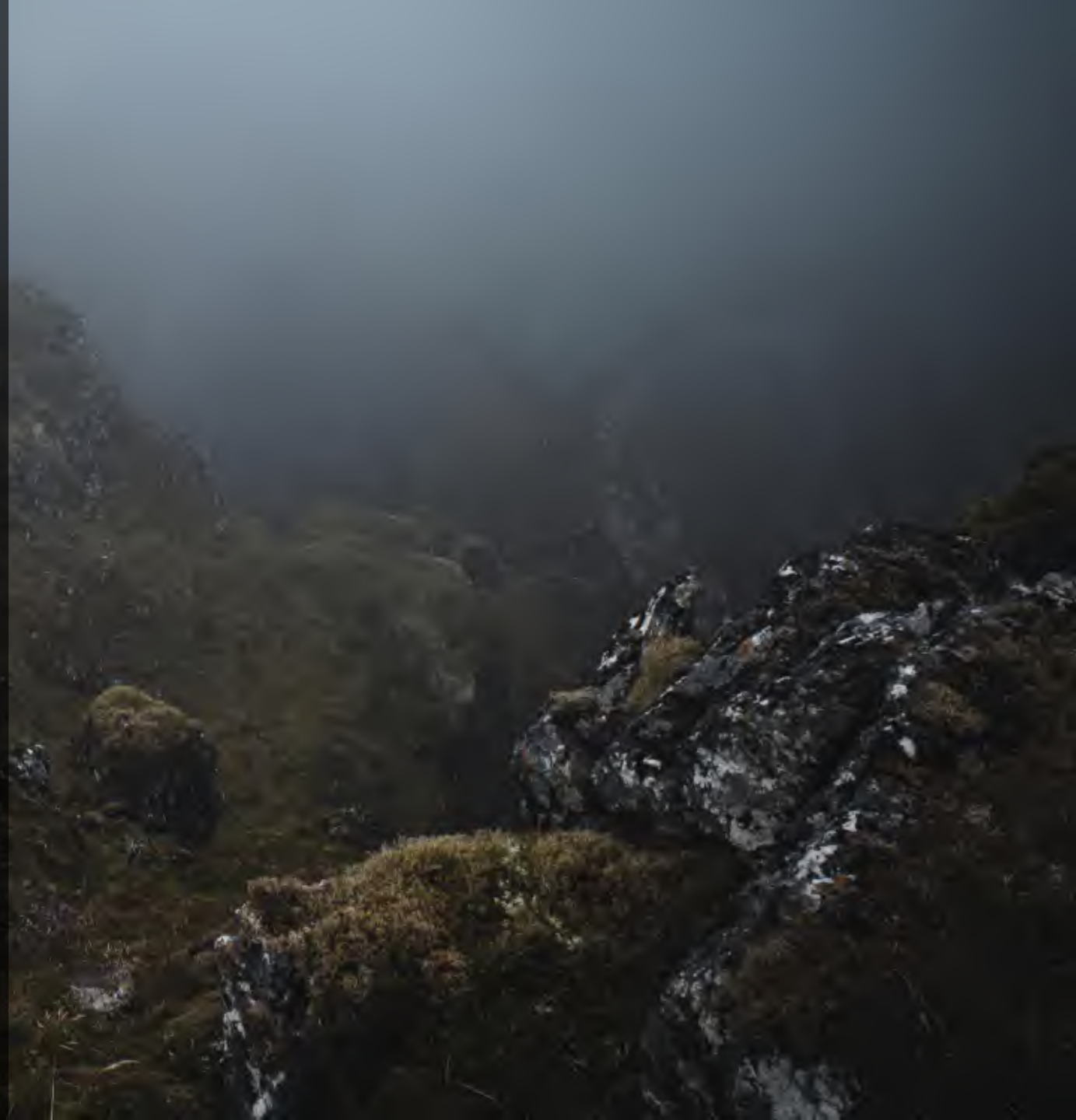
No detailed information about short roping.

Lack of pro-active discussions with the clients regarding “their weight, level of experience, and competence”.

The guide to client ratio.

Lack of advice about equipment and footwear.

No assessment of the clients’ competence.



Aonach Eagach Ridge

The Großglockner

The Großglockner





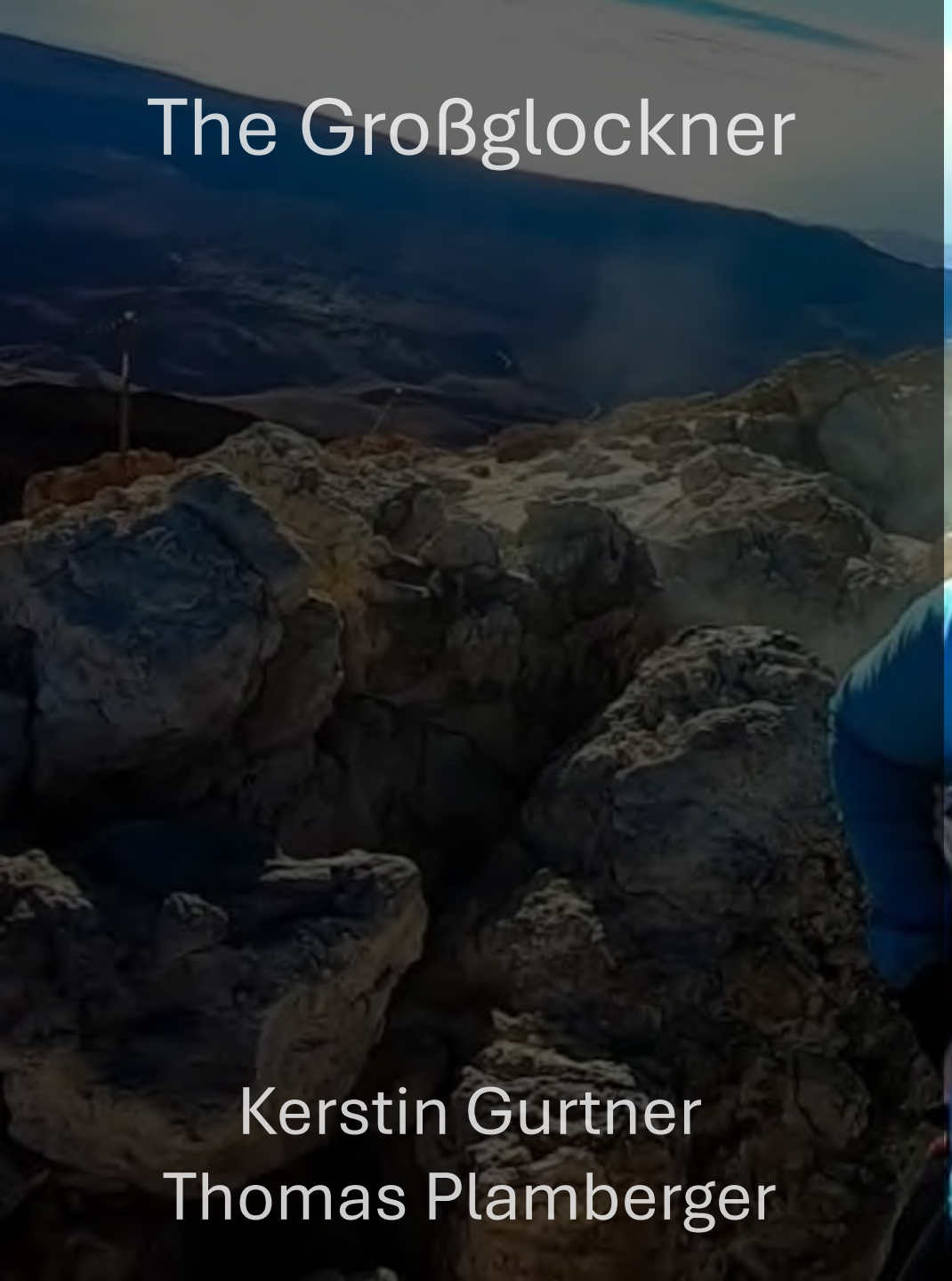
The Großglockner

Austria’s highest peak: 3,798m

Around 9,000 people make the ascent each year.

Around 30 have died on it in the last two decades.

The Großglockner





Kerstin Gurtner
Thomas Plamberger


Frühstücksplatz 3.550 m
3 Stunden Aufstiegszeit von der Stüdlhütte
Bei Überschreitung dieser Richtzeit
wird die Umkehr empfohlen!
Ab hier beginnen die Hauptschwierigkeiten!
Frühstücksplatz 3.550 m
(Time Checkpoint) Stüdlhütte - Frühstücksplatz
If it took you more than 3 hours to get here, turn back!
Your life depends on it.
Expect major difficulties from here on!





The Großglockner

Austrian Criminal Code

Section 81.Paragraph 81,

- Anyone who causes the death of another person through gross negligence (paragraph 6, paragraph 3) is to be punished with imprisonment of up to three years.

- Section 6(3) of the code provides:

- A person acts with gross negligence if he acts in an unusual and conspicuously negligent manner, so that the occurrence of a situation corresponding to the statutory offence was foreseeable as almost probable.

The Großglockner



The Großglockner

Garantenstellung

An implicit duty of care in a range of situations, such as a parent's duty to protect a child or a driver's responsibility to help a pedestrian they hit.

The prosecution argued that given Plamberger's experience in mountaineering, and Gurtner's relative lack of experience, that he had a duty to help her.

The Großglockner



The Großglockner

The Prosecution Case: 9 errors

- Taking Gurtner on the climb while she lacked the proper experience
- Starting the ascent two hours later than recommended
- Not carrying an emergency bivouac bag
- Allowing Gurtner to make the ascent with a splitboard and soft snowboarding boots
- Failing to turn back in the face of wind speeds of 74 km per hour (46 mph)
- Not placing an emergency call before nightfall
- Not signalling the helicopter for rescue.
- Failing to respond to alpine police messages after the 12:35am phone call.
- Not protecting Gurtner from the winds or cold before he left her (with her bivvy bag & emergency blankets), or removing her backpack or splitboard

The Großglockner

Verdict

- “I don’t see you as a murderer, not as someone trying to save his own skin…”
- Rather, he was someone who had “misjudged the situation, who had tried to get help, to support his girlfriend… It’s incredibly tragic what happened.”

The Großglockner

Mitchell v Glasgow City Council [2009] 1 AC 874 at [15]

The **first** is that **foreseeability of harm is not of itself enough for the imposition of a duty of care**: see, for example, *Dorset Yacht Co Ltd v Home Office [1970] AC 1004* , 1037–1038, per Lord Morris of Borth-y-Gest; *Smith v Littlewoods Organisation Ltd [1987] AC 241* , 251, per Lord Griffiths; *Hill v Chief Constable of West Yorkshire [1989] AC 53*, 60, per Lord Keith of Kinkel. **Otherwise**, to adopt Lord Keith of Kinkel's dramatic illustration in *Yuen Kun Yeu v Attorney General of Hong Kong [1988] AC 175* , 192, **there would be liability in negligence on the part of one who sees another about to walk over a cliff with his head in the air, and forebears to shout a warning**. The **second**, which flows from the first, is that **the law does not normally impose a positive duty on a person to protect others**. As Lord Goff of Chieveley explained in *Smith v Littlewoods Organisation Ltd [1987] AC 241* , 270–271, the **common law does not impose liability for what, without more, may be called pure omissions**.

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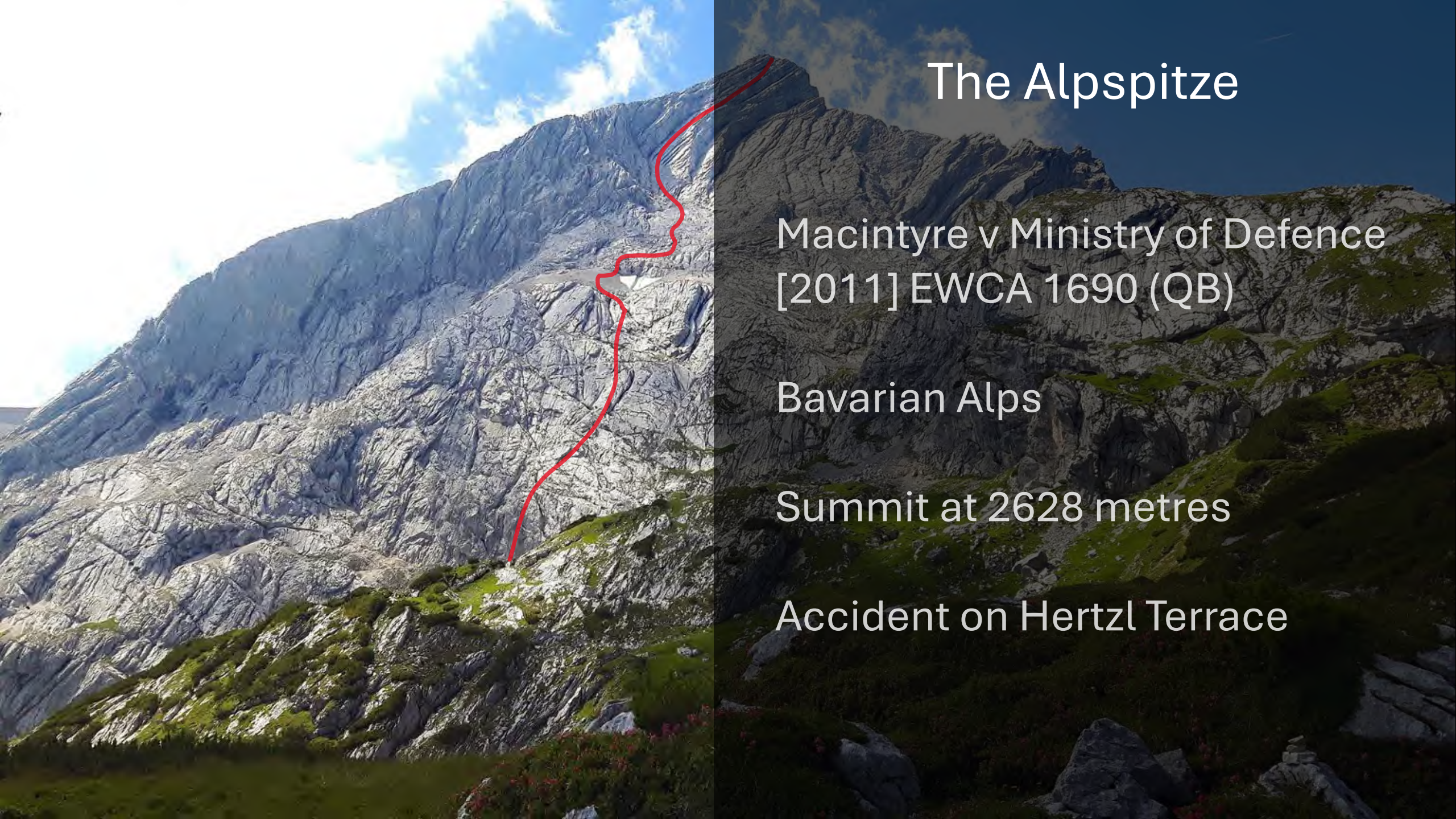
The Alpspitze

The Alpspitze





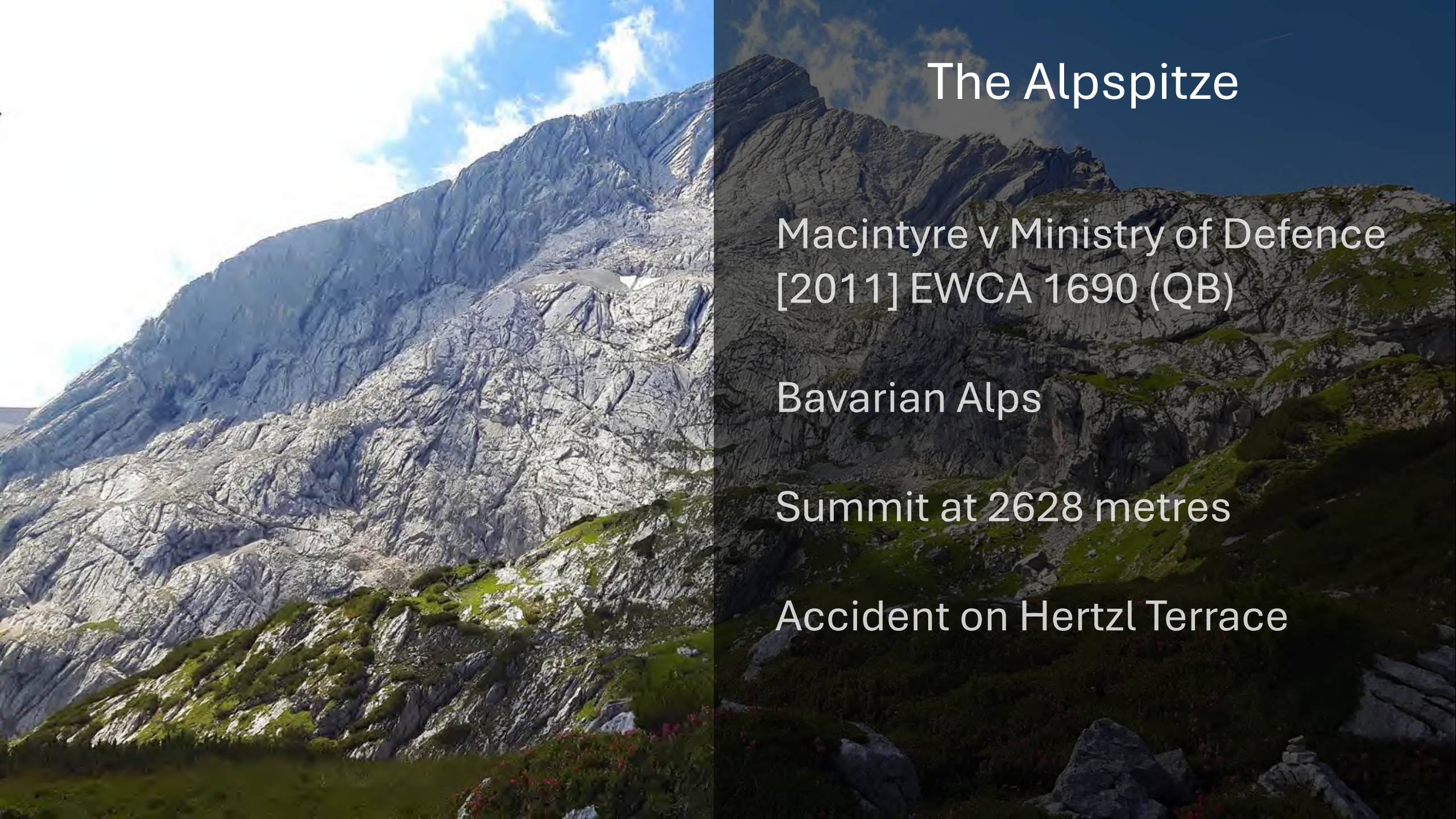
The Alpspitze

Macintyre v Ministry of Defence [2011] EWCA 1690 (QB)

Bavarian Alps

Summit at 2628 metres

Accident on Hertzl Terrace



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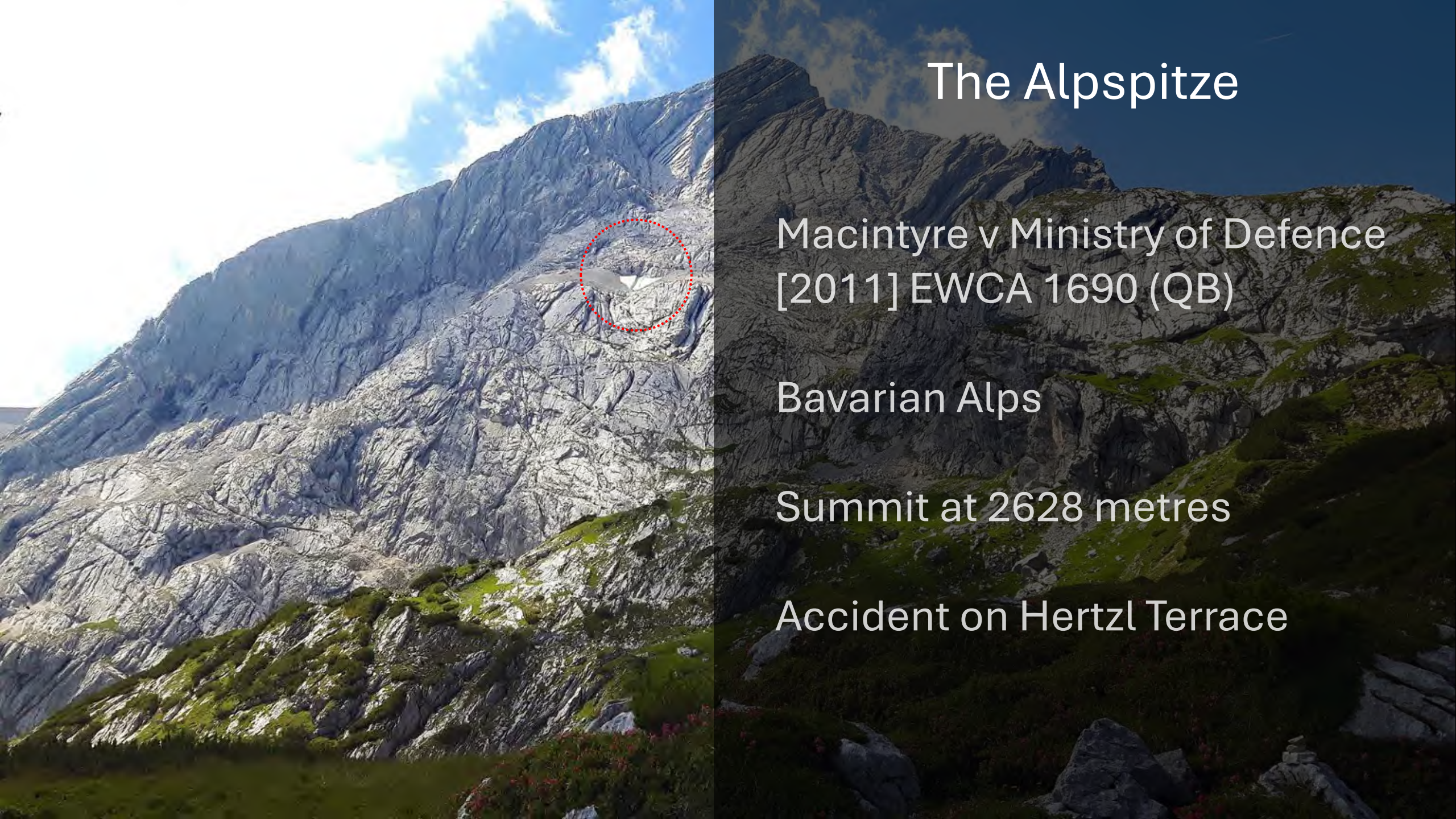

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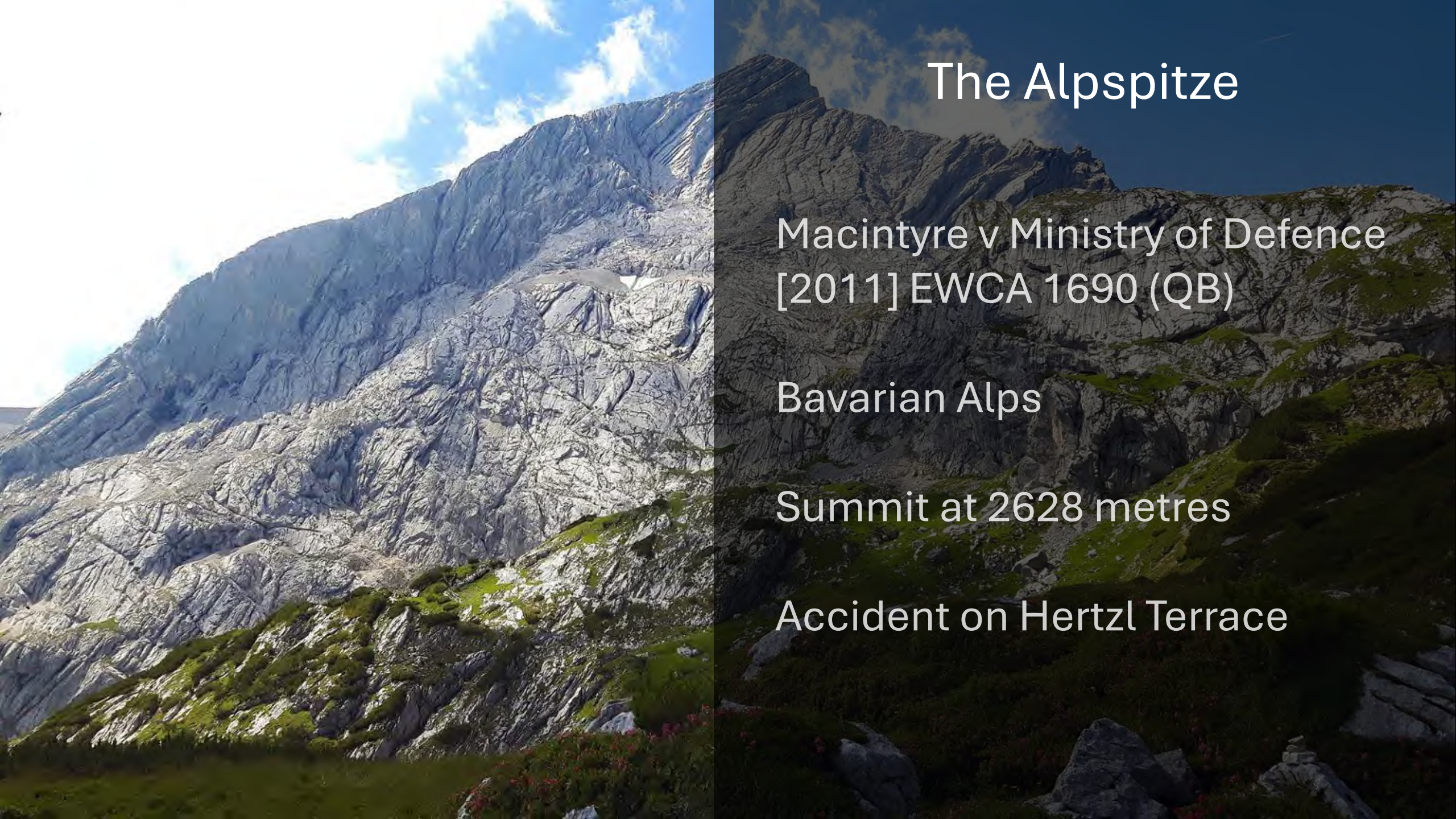

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Summit at 2628 metres

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Klettersteig

Duty of Care:
“[65] … to see that climbing undertaken was properly considered and that reasonable decisions were taken as to whether and where to climb: see *Chalk v Ministry of Defence [2002] EWHC 422.”*





The Alpspitze

“Duty of Care. By its very nature AT involves potential risk to life and limb. Leaders and instructors are to be quite clear that they are wholly responsible for the welfare and care of those in their charge (but this does not mean individuals abrogate their own personal safety)… It is wholly indefensible to expose anyone to unnecessary risk…” [67]

Cf: Tomlinson v Congelton Borough Council [2004] 1 AC 46

The Alpspitze

“[109] … The hazard always remains, however, that a rock fall may be precipitated by any movement of a climber, or even naturally.

[110] [pursuer’s expert accepted] … that however careful a climber may be, the risk of precipitating a rock fall cannot be eliminated. A rock fall such as this does not in itself indicate a failure to take reasonable care on the part of the person who caused the rock fall. Even taking all reasonable care, a climber may cause rocks to fall. It can happen to anyone. The important thing is to take all reasonable steps to minimise risk. You seek to put hands and feet in places where you will not disturb rock. You make sure the people below you know how to react and are wearing protective helmets.”

CAMP IV.
PANCH CHULI
at 19,000 feet
on the Sona Glacier

WH Murray
The Scottish Himalayan Expedition, 1951

"Each man had a sense of losing his independence. Every move he made affected the others. Lack of privacy makes prolonged camp life a test of self-discipline. **After several months of living in tents, if men commit no murder it is entirely through fear of public opinion. Throughout the expedition I should cheerfully have slain every one of my companions at quite frequent intervals but for the need of tiresome explanations to relatives.** Yet, although we damned each other heartily on occasion, the party never quarrelled once in five months. This was because we had started off by liking each other, however critical we might be now, in the crowded tents of the Panch Chuli." p.251.



BASE CAMP
AT LAMPAK

Left to right:
Scott, MacKinnon,
Murray, and Weir



The Alpspitze

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